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The decision of the Supreme Court of the United States in Wilson v. Seligman, reported in full with annotation on page 446 of this issue, may be understood as establishing beyond further controversy the proposition laid down in Pennoyer v. Neff, decided by the same court some time ago. The principle that process from the tribunals of one State cannot run into another State and summon parties there domiciled to leave its territory and respond to proceedings against them, was clearly enunciated in the latter case; but the value of Wilson v. Seligman as an authority is enhanced by the fact that the court in that case has before it and construe the statute of Missouri, which, it was contended, authorized execution upon a judgment against a corporation to be ordered against a non-resident stockholder to the extent of the unpaid balance of his stock, upon motion after service of notice upon him personally in the State of his residence.

The statute in question authorizes a motion to charge a stockholder for unpaid subscriptions "in open court after sufficient notice in writing to the person sought to be charged."

The supreme court, following the ruling of the Missouri court, in the recent case of Wilson v. Railway Co., hold that upon fundamental principles of law, the defendant was entitled to legal notice and trial of the question whether he was a stockholder before he could be charged with personal liability as such; and that personal service of notice within the jurisdiction of the court was essential to support an order or judgment ascertaining and establishing such liability, unless the defendant had voluntarily appeared or otherwise waived his right to such service. This is not only good law, but sound common sense, and it is somewhat surprising that it should have been questioned.

The question was recently raised in the Massachusetts legislature as to the constitutionality of legislation establishing municipal coal yards, and the supreme court of the State was asked for an opinion on the question. Five out of seven justices held that such legislation would be unconstitutional, saying: "We are not aware of any necessity why cities and towns should undertake this form of business any more than many others which have always been conducted by private enterprise, and we are not called upon to consider what extraordinary power the commonwealth may exercise or may authorize cities and towns to exercise in extraordinary exigencies for the safety of the State or the welfare of the inhabitants. If there be any advantage to the inhabitants in buying and selling coal and wood for fuel at the risk of the community on a large scale, and on what has been called the co-operative plan, we are of the opinion that the constitution does not contemplate this as one of the ends for which the government was established or as a public service for which cities and towns may be authorized to tax their inhabitants. We, therefore, answer the question in the negative."

The English Court of Appeal has, in the case of Alexander v. Jenkins, refused to extend the scope of the law of slander in an important particular. In that case plaintiff was a member of the Salisbury Town Council, and a teetotaller. Shortly after his election the defendant stated that the plaintiff was never sober, and was an unfit man to be upon the council. The jury at the trial found that the defamatory words were used, but it was contended on behalf of the defendant that the imputation of drunkenness was not actionable in the case of an occupant of an office without emolument, and from which the imputation, if true, would not be a ground for removing him. The judge at the trial held that the slander was actionable, and entered judgment for the plaintiff. This ruling was reversed by the court of appeal. Lord Herschell, pronouncing judgment, remarked that, as regarded a man's business or calling or an office of profit held by him, a mere imputation of want of ability was sufficient to support an action of slander without any suggestion of immorality or crime. In the case, however, of offices, not of profit, the law was different, and he felt very strongly that the courts ought not to extend the limits of such actions beyond the lines at

present laid down. No case had been cited wherein slander had been held maintainable by a man holding an office of credit as distinguished from an office of profit, unless the imputation would be a ground for removing him from that office. The law was that where the office was one of credit or honor, and the defamatory statement was not of misconduct in that office, slander would not lie in absence of proof of special damage, where the charge was one which, if true, would not lead to exclusion from the office. The court was now asked to extend the law to a case in which the act alleged would not involve exclusion from the office. This was a step in advance which his lordship thought ought not to be taken.

NOTES OF RECENT DECISIONS.

MASTER AND SERVANT—CONTAGIOUS DISEASE—LIABILITY OF MASTER.—The case of Long v. Chicago, K. & W. R. Co., decided by the Supreme Court of Kansas, involves a rather peculiar and interesting state of facts. There it appeared that plaintiff went to a station on the defendant's line of railroad to purchase a ticket to take passage on its road. In doing so he came in contact with the agent, who was selling tickets at that station, and it is charged that the latter was affected with the contagious disease of small-pox, a fact which the agent knew or might have known at the time, and that by reason of coming into proximity with the agent the plaintiff contracted the disease, and here brings suit against the railroad company for damages. The court declared that in such a case knowledge on the part of the railroad company is an essential element of liability and such knowledge not being apparent from this record, the railroad company was not liable, citing Bishop Non-Cont. Law, § 502; Meeker v. Van Rensselaer, 15 Wend. 397; Minor v. Sharon, 112 Mass. 477; Cesar v. Carutz, 60 N. Y. 229; Smith v. Baker, 20 Fed. Rep. 709; Gilbert v. Hoffman, 66 Iowa, 206.

An insane person is civilly liable to make compensation in damages to persons injured by his acts. An innkeeper who is insane was held liable for not keeping the goods of his guest safely. Cross v. Andrews, 2 Cro. Eliz. 622. Insanity is a disease, but a master or railroad company will not be held liable for such infirmity of an agent having no knowledge thereof. Story on Agency, § 8. But if one knowingly employs an insane person as his servant or agent, he will be held liable for damages to innocent third persons resulting from acts done by the insane person in the scope of his employment. Busw. Insanity, § 357. The scienter however must be shown. The employment knowingly of an improper person to come in contact with the public as an agent would be gross misconduct, but if the master or railroad company is faultless in regard to employing an agent and continuing his employment, the master or railroad company ought to be excused civilly from the consequences of any secret disease or like infirmity of the agent in the absence of all knowledge thereof.

BANKS AND BANKING — COLLECTIONS—DEFAULT OF CORRESPONDENT.—Where a bank receives for collection a note or bill, payable at a distant point, with the understanding that such a collection is an accommodation only, or that it shall receive no compensation therefor, beyond the customary exchange, and the bank transmits such paper to a reputable and suitable correspondent at the place of payment with proper instructions for the collection and remittance of the proceeds thereof, it will not be liable for the default of such correspondent. In such a case, it is said by the Supreme Court of Nebraska in First Nat. Bank of Pawnee City v. Sprague, (51 N. W. Rep. 846), the holder will be held to have assented to the employment in his behalf of such agents as are usually selected by banks in the course of business in making collections through correspondents, and the correspondent so selected will, in the absence of negligence by the immediate agents and servants of the transmitting bank become the agent of the holder only. The exchange which is usually charged by banks for the transmission of money from one place to another is not a sufficient consideration to support an implied undertaking to answer for the default of a correspondent.

ELECTIONS AND VOTERS — APPORTIONMENT OF SENATORIAL AND ASSEMBLY DISTRICTS—CONSTITUTIONAL LAW.—The case of State v. Cunningham, 51 N. W. Rep. 724, involving

the validity of the Wisconsin "Apportionment Act," is of considerable political as well as legal interest, at the present time. The extreme length of the case precludes publication in full, but the points decided may be stated as follows:

1. A suit in the name of the State, on the relation of the attorney-general, to enjoin the secretary of State from giving notices of the election of members of the senate and assembly, under the "Apportionment Act" (Laws 1891, ch. 482), on the ground that the act makes an apportionment in violation of the constitution is within the original prerogative jurisdiction of the supreme court, as it involves matters strictly *publici juris*, and presents a case in which the interposition of the court is required to preserve the State's prerogative of legislation, since a senate and assembly elected under an unconstitutional apportionment act are not bodies which can lawfully exercise the prerogative of legislation.

2. Such a suit is within the original jurisdiction of the supreme court, for the further reason that the apportionment act, if unconstitutional, deprives the people of the "equal representation in the legislature" guaranteed them by the constitution.

3. The entertaining of jurisdiction of such a suit is not an invasion of the constitutional province of the legislative department, but an inquiry into the constitutionality of the law itself, and, if the law is unconstitutional, the court has the power to declare it void.

4. Since such a suit concerns matters strictly *publici juris*, in which no one citizen has any special interest other than that which is common to citizens in genera., it is properly brought on the relation of the attorney-general in the name of the State, on complaint made to him by a private citizen; and it is not necessary that the latter should be joined as a relator, or that any special interest be shown in him, or in the attorney-general.

5. An act of the legislature apportioning the State into senate and assembly districts is passed in the exercise of its legislative, and not its political power; and its constitutionality is subject to judicial inquiry.

6. The duty of the secretary of State to give notices of the election of members of the senate and assembly under the apportionment act is not political, but is purely ministerial, and, if the act is unconstitutional, he may be restrained by injunction from proceeding under it.

7. The provisions of article 4 of the constitution, requiring the legislature to apportion and district the members of the senate and assembly "according to the number of inhabitants;" declaring that the assembly "districts are to be bounded by county, precinct, town or ward lines, to consist of contiguous territory, and be in as compact form as practicable;" that the senate districts must be "of convenient and contiguous territory," and must not divide assembly districts; and that members of the senate and assembly must be elected by single districts thus formed, are mandatory, and not subject to legislative discretion in making the apportionment.

8. Const. art. 4, § 4, declaring that, in apportioning the State into senate and assembly districts, the assembly districts shall be "bounded by county, precinct, town or ward lines, to consist of contiguous territory, and be in as compact form as practicable," requires the integrity of county lines to be preserved, and prohibits the formation of a district partly out of one or more than one county and a fraction of another county, or of fractions of two or more counties; and, as the apportionment act of 1891 (Laws 1891, ch. 482) violates this restriction, it is void.

9. The act is void for the further reason that it violates Const. art. 4, § 3, requiring the apportionment of the State to be "according to the number of inhabitants," since, though according to the population of the State, each senate and assembly district should, as near as possible, contain respectively 61,000 and 17,000 inhabitants, the apportionment is such that under it the most populous senate district contains 68,000, and the least populous 37,000, and the most populous assembly district contains 38,000, and the least populous 6,000, while the other districts are also greatly disproportioned.

10. The provisions of an act apportioning the State into senate and assembly districts are so largely dependent on each other that, if some of the districts are unconstitutionally apportioned, the entire act is void.

RAILROAD COMPANIES—CABLE RAILWAY—ADDITIONAL SERVITUDE — INJUNCTION.—One point in the case of Rafferty v. Central Traction Company, decided by the Supreme Court of Pennsylvania, is of live interest. The holding is, that the use of a street by a cable railway company is not an additional servitude entitling abutters to compensation, though vehicles cannot stand between the curbing and the tracks without interfering with the cars, and though the pipes under the surface of the street by being lowered to make room for the cable conduit may be slightly more difficult of access. Upon this point the court says:

It has been many times held, and by many different courts, that the use of a public street for purposes of street railroads is not the imposition of an additional servitude, and does not entitle the abutting landowners along the street to compensation for such use. In the case of Lockhart v. Railway Co., 139 Pa. St. 419, 21 Atl. Rep. 26, we affirm the lower court in the the following ruling: "It cannot be doubted at this day that the legislature of Pennsylvania has the power to authorize the incorporation of companies with power to build and operate railways with horses over the street of cities, with the authority and consent of the authorities of said cities, as provided by section 9, art. 17, of the constitution; and it is too late to say that such use and occupation of the streets impose such an additional burden of servitude thereon as renders it necessary to provide for compensation therefor to the owners of abutting property. * * * So far as the street use proper is concerned, there is no substantial difference between the tracks of such a street railway and one operated by electricity. * * * And it may be now taken as settled that the owners' rights, as to abutting property, are subject to the paramount right of the public and the rights of the public are not limited to a mere right of way, but extend to all beneficial legitimate uses, such as the public may from time to time require. * * * Recognizing the right of the legislature and city authorities to authorize the building of railways upon the streets of a city without com-

pensation to property owners, because it is a means of public transportation and accommodation, the necessary and proper apparatus for moving them must be allowed to follow as an incident, unless there is something illegal in its construction or use." In Halsey v. Railroad Co., 20 Atl. Rep. 859 (court of chancery N. J., 1890), it was held that land taken for a street is taken for all time, and compensation is made once for all, and by taking the public acquire the right to use it for travel, not only by such means as were in use when the land was acquired, but by such other means new wants and the improvements of the age may render necessary; and that the question whether a new method of using the street for public travel results in the imposition of an additional burden on the land or not must not be determiued by the use which the new method makes of the street, and not by the motive power which it employs in such use. It was held that the erection of poles in the center of the street, and on the sidewalk in front of the plaintiff's property, with connecting wires, for the purpose of applying electricity as a motive power to propel street cars, was not imposing an additional servitude upon the street, and that the owner had no cause of action. In Williams v. Railroad Co., 41 Fed. Rep. 556, the court says: "The operation of a street railroad by mechanical power, when authorized by law, on a public street, is not an additional servitude or burden on land already dedicated or condemned to the use of a public street, and is therefore not a taking of private property, but is a modern and improved use of the street as a public highway, and affords to the abutting property holder, though he may own the fee of the street, no legal ground of complaint." In the case of Briggs v. Railway Co., 79 Me. 363, 10 Atl. Rep. 47, the court said: "We do not think the construction and operation of a street railroad in a street is a new and different use of the lands from its use as a highway. The modes of using a highway, strictly as a highway, are almost innumerable, and they vary and widen with the progress of the community. * * * The laying down of rails in the street, and running street-cars over them for the accommodation of persons desiring to travel on the street, is only a later mode of using the land as a way, using it for the very purpose for which it was originally taken. It may be a change in the mode, but it is not a change in the use. * * * We do not think the motor is the criterion. * * * This defendant company is using the land as a street. Its railroad is a street railroad. Its cars are used by those who wish to pass from place to place on the street. A change in the mode is not a change in the use."

All this is strictly applicable to the facts of the present case. High street was a public street of the city before the defendant's tracks were laid, and it is so still. Whether the motive power of the cars be horses, electricity, or a submerged cable makes no difference in the use, and no one of these modes of use confers any right of action upon the abutting owner. In Taggart v. Railway Co. (R. I.), 19 Atl. Rep. 326, it was held that a street railway operated by electricity imposed no new servitude upon the property owner, although poles and wires were erected in the street in connection with the railway. Laying a street-car track so close to the sidewalk that vehicles cannot stand gives no ground for action. Kellinger v Railway Co., 50 N. Y. 206.

COMPULSORY PHYSICAL EXAMINATION IN PERSONAL INJURY CASES.

Sec. 1. *Introduction.*—Questions concerning the right or power of a court to compel a submission of the person of a plaintiff or defendant to an examination, in or out of court, usually, if not exclusively, arise in actions to recover damages for injuries to the person, to obtain a divorce and in criminal prosecutions.

In actions to recover damages for injuries to the person, aside from any statute authorizing it, there are two lines of cases that are diametrical opposed to each other: One denying the power of a court to enforce it, and the other insisting upon it.

Sec. 2. *No Right to Examination in Personal Injury Cases.*—If the number of cases are to be considered as determining the weight of authority, then, according to that weight, the courts have the power to compel such an examination in an action to recover damages for personal injuries. But quite recently several courts have taken the opposite view, including the Supreme Court of the United States, in an opinion exhausting the subject. After stating the right of every individual, by the common law, to the possession and control of his own person, free from all restraint or interference of others, unless by clear and questionable authority of law, and quoting Judge Cooley's remark that, "The right to one's person may be said to be a right of complete immunity, to be let alone," Justice Gray says: "The inviolability of the person is as much invaded by compulsory stripping and exposure as by a blow. To compel anyone, and especially a woman, to lay bare the body, or to submit to the touch of a stranger, without lawful authority, is an indignity, an assault, and a trespass; and no order of process, commanding such exposure or submission, was ever known to the common law in the administration of justice between individuals, except in a very small number of cases, based upon special reasons, and upon

ancient practice, coming down from ruder ages, now mostly obsolete in England, and never, so far as we are aware, introduced into this country." And he proceeds to state that no English precedent has been found by him on this point,—not even a motion for such an examination ever having been made in an English court, so far as the books show. He, then, after citing many cases, *pro* and *con*, concludes: "The order moved for, subjecting the plaintiff's person to examination by a surgeon, without her consent and in advance of trial, was not according to the common law, to common usage, or to the statutes of the United States."[1]

These views previously, had been in a measure, announced in New York, in the superior court. "It is undoubtedly true," said the court, "that not unfrequently plaintiffs, suing for bodily injuries, do exhibit in court the injured part. Nor do we know of any reason why they should not do this, notwithstanding the exhibition may excite sympathy. And, on the other hand, all unreasonable excitement of an injured part (not justified by any dictate of modesty or otherwise), may excite a doubt in the mind of the jury as to the genuineness or extent of the alleged injury. But we cannot admit the principle that, either in the presence of the jury, or in the presence of a referee, a party can compel his opponent to exhibit his body in order to enable physicians to examine and question and testify." The court also held that the usual statutory provisions for the examination of a party under oath before trial had no application to an examination of his person. Upon the advisability of a court possessing the power to order compulsory physical examination, it was said, and the reasons assigned seem to us to be sound: "There may be danger that in actions of this nature plaintiffs will exagerate the injuries they have received; and that defendants may be at a disadvantage in ascertaining the exact truth. But this evil is far less than the adoption of a system of bodily, and perhaps immodest examinations, which might deter many, especially women, from ever commencing actions, however great the injuries they had sustained."[2]

In Elfers v. Woolley, just cited, it was held by a majority of the judges of the court, that it was not error to refuse to instruct the jury that they had the right to infer from the refusal to submit to the examination, that it would not disclose any fact favorable to the plaintiff. The court instructed the jury, however, that they might give it such weight as they thought it ought to have; and of this it was held that the charge was as favorable to the defendant as he was entitled to, and he could not complain. But if the plaintiff had complained of the instruction given, a very different question would have been presented. If it is unlawful for the court to compel an examination of the person of the plaintiff, then it logically follows that no inference can be drawn against him for refusing to submit to an examination that the defendant is not entitled to. The latter cannot be permitted to manufacture evidence by making an improper motion or request of the court. To allow him to give evidence of the refusal is to allow him to profit by his own wrong. Then, again, great injury might be occasioned to the plaintiff; for if he were a sensitive man, or a man of delicate and gentle temperament, he might shrink from an examination, where a coarse-grained or vulgar juryman, or a majority of the jury composed of such characters, would be totally unable to appreciate his delicate feelings and consider that the refusal was made to cover up evidence favorable to the defendant.

In Illinois the courts hold that they have no power to compel an examination. On the appeal of Holland's case the court seems to have recognized the right, but put its decision on the ground that the defendant could not complain, for the reason that it had had ample opportunity, after refusal by the court, to make an examination by its own chosen physicians.[3]

[1] Union Pacific R'y Co. v. Botsford, 141 U. S. 250, 11 Sup. Ct. Rep. 1000.

[2] Roberts v. Ogdensburgh, etc. R. R. Co., 29 Hun, 154. This case in effect overrules Walsh v. Sayre, 52 How. Pr. 334, and Shaw v. Van Rensselaer, 60 How. Pr. 143; and it has been approved and followed in Neuman v. Third Avenue R. R. Co., 18 J. & S. 412; McSwyny v. Broadway, etc. R. R. Co., 7 N. Y. Supp. 456, s. c., 27 St. Rep. 363, and in Elfers v. Woolley, 116 N. Y. 294, s. c., 26 St. Rep. 678, in the dissenting opinion; McQuigan v. Delaware, etc. Co., 129 N. Y. 150, s. c., 29 N. E Rep. 235, affirming 15 N. Y. Supp. 973.

[3] Parker v. Enslow, 102 Ill. 272; Chicago, etc. R. R. Co. v. Holland, 18 Ill. App. 418, 423, s. c., 122 Ill. 461. The case of Loyd v. Hannibal, etc. R. R. Co., 57 Mo. 509, has been overruled.

In Indiana it has been held that the court had no power, without the aid of a statute, to order an examination.[4]

Sec. 3. *Right to the Examination in Personal Injury Cases.*—The leading case upon the power of the courts to compel submission to examination is Schroeder v. Chicago, etc. R. R. Co.[5] The application was to ascertain the character and extent of his injuries. The court held that it had the power to compel the examination on the ground: (1) That a party to an action has the right to demand the administration of exact justice, and for that purpose evidence essential and within the control of the court shall be produced; (2) that it is within the power of the court, since the plaintiff is a witness before it, to compel his examination, and his refusal may be treated as a contempt; (3) that courts in divorce proceedings may direct an examination on the ground of impotency; and (4) that the plaintiff is permitted in actions for personal injuries to exhibit such injuries.

To the argument that the contemplated examination would be an indignity to his person, the court regarded it as "probably more imaginary than real;" and it cites examples of life insurance and military examinations. To the argument that the court could instruct the jury that they might draw an inference against the plaintiff from his refusal to submit to an examination, the court said the position was not correct. "The defendant is left to depend upon the inference of the jury, which might or might not have been exercised, instead of being the truth, disclosed by direct and positive evidence. The law will not require it to depend upon such inference when it cannot afford the means of producing competent evidence upon the question in issue." No authority is cited in the opinion, except Bishop on Marriage and Divorce.

Since this case was reported a number of cases have been decided the same way, some which cite it.[6]

Sec. 4. *Discretion of Court.*—A few of the cases hold that if a proper case is made the right of the party asking for an examination is one that cannot be denied; and if denied, is reversible error.[7]

But a very decided majority of the cases hold that the matter is discretionary with the court.[8] Yet if the court deny it as a matter of right, the appellate court will reverse the case; for, in such an instance, the court has not exercised its discretion.[9] The presumption, is, however, that the order was not refused on the ground of want of power in the court to make it, but on the ground that, under the circumstances, it ought not to have been granted. This is a presumption that always runs in favor of the trial courts at every step of the proceeding; and he who complains of their rulings must affirmatively show that error committed was prejudical to him.[10]

Sec. 5. *When May be Refused.*—If not made in time the court may refuse to order the examination; such is an instance when the application is made at such a time that it would unnecessarily prolong the trial. Thus, if not made until after the close of the plaintiff's evi-

[4] Pennsylvania R. R. Co. v. Newmeyer, 28 N. E. Rep. 860, overruling the *dictum* in Kern v. Bridwell, 119 Ind. 226, 21 N. E. Rep. 664.

[5] 47 Iowa, 375, 19 Alb. L. J. 234.

[6] Atchison, etc. R. R. Co. v. Thul, 29 Kan. 466, s. c., 44 Am. Rep. 659; Shepard v. Missouri Pacific R. R. Co., 85 Mo. 629, s. c., 55 Am. Rep. 390; Kinney v. City of Springfield, 35 Mo. App. 97; Owens v. Kansas City, etc. R. Co., 95 Mo. 169; Sidekum v. Wabash, etc. R. Co., 93 Mo. 400; Missouri Pacific R. Co. v. Johnson, 72 Tex. 95; White v. Milwaukee, etc. R'y Co., 61 Wis. 536, s. c., 50 Am. Rep. 154; International, etc. R. R. Co. v. Underwood, 64 Tex. 463; Miami, etc. Co. v. Baily, 37 Ohio, 104; Stuart v. Havens, 17 Neb. 211; Sioux, etc. R. R. Co. v. Finlayson, 16 Neb. 578, s. c., 18 Am. & Eng. R. R. Cas. 68; Hatfield v. St. Paul, etc. R. R. Co., 33 Minn. 130; McGuff v. State, 88 Ala. 147, s. c., 7 South. Rep. 35 (of the prosecutrix, a child, in a rape case); Richmond, etc. R. R. Co. v. Childress, 82 Ga. 719 (decision placed upon a statute); Alabama, etc. R. R. Co. v. Hill, 90 Ala. 71, s. c., 8 South. Rep. 90; Sibley v. Smith, 46 Ark. 275. In Alabama it was held that it was error to overrule a motion for the examination of a young woman plaintiff, even though she was a young woman of nervous temperament and delicate and refined feelings, and she had already submitted to several examinations of her attending physicians, the proposed examination not involving any ill consequences. Alabama, etc. R'y Co. v. Hill, 90 Ala. 71, s. c., 8 South. Rep. 90.

[7] Alabama, etc. R. R. Co. v. Hill, 90 Ala. 71, 8 South. Rep. 90; Sibley v. Smith, 46 Ark. 275.

[8] Richmond, etc. R. R. Co. v. Childress, 82 Ga. 719; Sioux, etc. R. R. Co. v. Finlayson, 16 Neb. 578, 18 Am. & Eng. R. R. Cas. 68; Stuart v. Havens, 17 Neb. 211; St. Louis Bridge Co. v. Miller, 28 N. E. Rep. 1091; International, etc. R. R. Co. v. Underwood, 64 Tex. 463; Atchison, etc. R. R. Co. v. Thul, 29 Kan. 466, 44 Am. Rep. 659; Missouri Pacific R. R. Co. v. Johnson, 72 Tex. 95; Owen v. Kansas City, etc. R. R. Co., 95 Mo. 169; Sidekum v. Wabash, etc. R. R. Co., 93 Mo. 400; Kinney v. City of Springfield, 35 Mo. App. 97; White v. Milwaukee, etc. R. R. Co., 61 Wis. 536.

[9] White v. Milwaukee, etc. R. R. Co., *supra;* Atchison, etc. R. R. Co. v. Thul, *supra;* Schroeder v. Chicago, etc. R. R. Co., *supra.*

[10] Miami, etc. Co. v. Baily, 37 Ohio St. 104.

dence in chief, and at the commencement of the introduction of the defendant's evidence, and no reason is shown for the delay in making the application, it may be refused on that ground alone.[11] So a request made at any time during the trial may be denied;[12] especially where it is sought to have the examination made by experts called by the adverse party, and not by those agreed upon by the parties, or appointed by the court.[13]

So it was held not error to refuse to compel a plaintiff to submit to an examination by a physician to whom he objected, although the objection did not go to his competency or integrity; the court adding that if the "power should be exercised at all, it should be by the appointment by the court of one or more disinterested experts, either of its own selection or such as may be agreed upon by both parties."[14] Since the ordering of an examination only for the purpose of attaining the ends of justice, such an examination may be refused if there is no showing that it is necessary to a full presentation of all the facts, which could not be otherwise obtained, and that the person to be examined is unwilling to voluntarily submit to it;[15] or at least that the examination would likely result in some material discovery or disclosure.[16] It necessarily, therefore, devolves upon the party applying for the examination to show that none has been made, or if made that it was insufficient and incomplete, or that one has been made by incompetent persons, or by persons completely within the control and interest of the opposite party; and if the party applying for it uses as witnesses those persons who made the examination, to prove the extent of the injuries, he will, in all probability, be deemed to have waived his right to examination, even though his application for it was made prior to calling them as witnesses.[17]

So where the court refused to order the examination before, but said it would during the trial, if it became necessary to ascertain the real condition of the plaintiff, and the defendant failed to subsequently renew the motion, it was held that the court could well conclude that the defendant had abandoned it.[18] So error in making a refusal is cured if it is shown that all the facts are fairly and fully brought out by competent and unbiased witnesses.[19]

So where a defendant required the plaintiff, a lady of refinement, to submit to an examition by three skilled physicians, and she declined, saying, as a reason, that she had been once so examined by a skilled physician, naming him, who resided at the place of trial, and whose testimony could be obtained, and that she was willing to submit to an examination by another physician, naming him, of high skill, whose testimony could also be obtained, it was held not error to overrule the defendant's motion, for "her offer was a fair one, and that asked by the defendant unreasonable."[20]

Two days after a case was set for trial, and one day before that day, the defendant asked that the court appoint a committee of three physicians to examine the plaintiff. The court overruled the motion, stating a reason that the application ought to have been made sooner, because the granting of the application would delay the trial of the case. The ruling of the court was held not to be erroneous.[21]

The court may overrule a motion asking that the opposite party submit himself to an examination by certain named physicians; the application should be that the court appoint a physician or physicians (the fewer the better) without naming anyone.[22]

[11] *Id.*

[12] Stuart v. Havens, 17 Neb. 211. But the court may order it if it sees fit. St. Louis Bridge Co. v. Miller, 28 N. E. Rep. 1091; Hen v. Lowrey, 122 Ind. 225, 23 N. E. Rep. 156 (this case is in fact now overruled by the case above cited); Railroad Co. v. Brinker, 26 N. E. Rep. 178.

[13] Sioux, etc. R'y Co. v. Finlayson, 16 Neb. 578.

[14] Missouri Pacific R. R. Co. v. Johnson, 72 Tex. 95. In this case the plaintiff was willing to be examined by any other physician than the one selected by the defendant.

[15] International, etc. R. R. Co. v. Underwood, 64 Tex. 463; Owens v. Kansas City, etc. R. R. Co., 95 Mo. 169.

[16] Richmond R. R. Co. v. Childress, 82 Ga. 719; St. Louis Bridge Co. v. Miller, 28 N. E. Rep. 1091. If the application is to ascertain the extent of the plaintiff's injuries, and not for the purpose of obtaining evidence for the trial, it may by denied. St. Louis Bridge Co. v. Miller, *supra*.

[17] International, etc. R'y Co. v. Underwood, 64 Tex. 463; Sibley v. Smith, 46 Ark. 275; Shaw v. Van Rensselaer, 60 How. Pr. 143; Chicago, etc. R. R. Co. v. Holland, 122 Ill. 461; St. Louis Bridge Co. v. Miller, 28 N. E. Rep. 1091.

[18] Sidekum v. Wabash, etc. R. R. Co., 93 Mo. 400.

[19] Owens v. Kansas City, etc. R'y Co., 95 Mo. 169; Sibley v. Smith, 46 Ark. 275.

[20] Shepard v. Missouri Pacific R'y Co., 85 Mo. 629.

[21] Kinney v. City of Springfield, 35 Mo. App. 97.

[22] Sioux City, etc. R'y Co. Finlayson, 16 Neb. 578.

Where the uncontradicted testimony of several witnesses was that the plaintiff limped since she received her injury, it was held not error for the court to refuse to compel her to walk across the floor in front of the jury, although it had the undoubted power to require it; for the reason that such a matter was within the discretion of the court, and could have but little aided the jury in determining the extent of her injuries.[23]

In the case of a child bringing an action against a physician for malpractice, on application of the physician to compel the child to submit the injured part of his body to the defendant and such other skillful and competent surgeons as he might name, under the direction of a referee appointed by the court for that purpose, the order was granted; but the case has since been overruled so far as it is an authority holding that the court has the power to order any examination.[24]

Where a defendant applied for an order for an examination of the plaintiff by certain named physicians, and his motion was overruled; but a year later the defendant sent two physicians of its own selection to examine the plaintiff, one of whom had before made a thorough examination, and who was not admitted, but the other was, and made an examination; and still later another one of the physicians named in the motion was also allowed to make a thorough examination of the plaintiff, it was held that the defendant, having had the benefit of an examination by three of its physicians could not complain of the overruling of its motion.[25]

Sec. 6. *Punishment for Refusal to Submit to an Examination.*—Where the order is to examine the plaintiff, the usual punishment for a refusal to obey the order is to dismiss his cause of complaint.[26] But if the court sees fit, it may enforce its order in the same manner that it would compel a stubborn witness to testify.[27] The refusal of a party to submit to an examination after order made should be shown by an affidavit.[28] If this is not done the court may permit evidence of such refusal to be given to the jury, on the ground that it is a suppression of testimony.[29] Yet evidence of the plaintiff's refusal to submit to an examination must be excluded if the court declined to order the examination;[30] and it is not error for the court to charge the jury that they may consider such fact in this light; but if the motion come too late, the court may refuse to charge the jury that the refusal of the plaintiff to be examined may be considered by them, especially if the motion was not made until after the plaintiff had closed his evidence in chief, and the object of the examination was to obtain the assistance of the plaintiff in furnishing the defendant with additional evidence, which the former had no reason to anticipate when he closed his evidence in chief, and to which evidence thus furnished he could not have replied except by a successful appeal to the discretion of the court.[31]

Sec. 7. *Expense of Examination.*—The party applying for the examination should offer and pay the expense thus incurred.[32]

Indianapolis, Ind. W. W. THORNTON.

[23] Hatfield v. St. Paul, etc. R. R. Co., 33 Minn. 130, 18 Am. & Eng. R. R. Cas. 292.
[24] Walsh v. Sayre, 52 How. Pr. 334.
[25] Chicago, etc. R. Co. v. Holland, 122 Ill. 461.
[26] Miami, etc. Co. v. Baily, 37 Ohio St. 104; Owens v. Kansas City, etc. R. R. Co., 95 Mo. 169; Shepard v. Missouri Pacific R'y Co., 85 Mo. 629; Schroeder v. Chicago, etc. R. R. Co., *supra*.
[27] Schroeder v. Chicago, etc. R. R. Co., *supra*. *Quære:* Can the court compel an examination by the use of force?
[28] Richmond, etc. R. R. Co. v. Childress, 82 Ga. 719.
[29] Shepard v. Missouri, etc. R'y Co., *supra*.
[30] Kinney v. City of Springfield, 35 Mo. App. 96, 107.
[31] Miami, etc. Co. v. Baily, 37 Ohio St. 104.
[32] Richmond, etc. R. R. Co. v. Childress, 82 Ga. 719.

CORPORATION—STOCKHOLDER—JUDGMENT FOR UNPAID SUBSCRIPTION—NOTICE.

WILSON V. SELIGMAN.

United States Supreme Court, March 14, 1892.

1. Although the Revised Statutes of Missouri of 1879 (par. 736), authorize execution against a stockholder on a judgment against a corporation to the amount of the unpaid balance of his stock subscription, yet an alleged stockholder of a Missouri corporation, not served with process in the State upon the original writ, in the action against the corporation is entitled to legal notice and trial of the issue as to his stockholdership before he can be charged with such liability.

2. Although the statute provides for "sufficient notice in writing to the person sought to be charged," yet, upon the fundamental principles of jurisprudence, an alleged stockholder is entitled to personal service of notice within the jurisdiction of the court, unless he has voluntarily appeared or has otherwise waived his right to such service.

3. A State may, by its laws, require as a condition precedent to the organization of a corporation, or to the transaction of business within its territory, that it shall appoint a resident agent on whom process may

be served, or even that every stockholder of a corporation shall appoint an agent on whom service may be made within the State; and that upon failure to make such appointment or designation of the domicile of such agent, service may be made upon a public officer, and that a judgment rendered against the corporation shall bind the stockholders, whether within or without the State.

GRAY, J.: This was an action brought by Wilson, a citizen of Missouri, against Seligman, a citizen of New York, in the Circuit Court of the City of St. Louis and duly removed by the defendant into the Circuit Court of the United States. The action was upon an order or judgment of the State Court under section 736 of the Revised Statutes of Missouri of 1879, by which execution was awarded against the defendant as a stockholder in the Memphis, Carthage & Northwestern Railroad Company, a corporation of Missouri, upon a judgment recovered by the plaintiff against the corporation. The defendant answered, denying that he was a stockholder, and averring that the order or judgment against him was void for want of jurisdiction of his person. The present case was submitted, a jury being duly waived in writing, to the court, which found the following facts:

The plaintiff's judgment against the corporation was recovered in the State Court on April 2, 1883, for $72,799.38 and interest. Upon that judgment, executions against the corporation were issued to the sheriffs of the several counties in Missouri through which it had built its road, and were returned unsatisfied; and the corporation was then, and has been ever since, insolvent. On July 9, 1883, the plaintiff filed a motion in the same court for an order that execution for the amount of that judgment issue against the defendant as the alleged holder of stock in the corporation on which more than the amount of the judgment against the corporation was still unpaid. Notice of this motion was served on him personally at his domicile in New York, and was posted in the clerk's office of the State Court. No notice was served on him within the State of Missouri, and he never was a citizen or a resident of this State. At the hearing of the motion, on December 3, 1883, the defendant did not appear; and the court entered an order finding that he was a stockholder as alleged, and was liable to execution for the amount of the judgment against the corporation and granting the motion and ordering execution to issue against him accordingly. This was the order or judgment upon which the present action was brought.

Upon these facts the court below gave judgment for the defendant. 36 Fed. Rep. 154. The plaintiff sued out this writ of error.

The statute of Missouri under which these proceedings were had authorizes execution upon a judgment against a corporation to be ordered against any of its stockholders only to the extent of the unpaid balance of their stock, and "upon motion in open court, after sufficient notice in writing to the person sought to be charged." Gen. St. Mo. 185, ch. 62, § 11; Rev. St. 1879, § 736; Rev. St. 1889, § 2517. Each person sought to be charged as a stockholder is thus given the right, before execution can be awarded against him on a judgment against the corporation, to written notice and judicial investigation of the questions whether he is a stockholder, and, if he is, how much remains unpaid on his stock. Although the statute does not define the course of proceedings or the kind of notice otherwise than by directing that the proceeding shall be summary upon motion and "after sufficient notice in writing to the persons sought to be charged," there can be no doubt that in this, as in all other cases, in which a personal liability is sought to be enforced by judicial proceedings and after written notice the notice must be personally served upon the defendant within the territorial jurisdiction of the court by whose order or judgment his personal liability is to be ascertained and fixed, unless he has agreed in advance to accept, or does in fact accept, some other form of service as sufficient.

The general principles applicable to this subject were clearly and exhaustively discussed by this court, speaking by Mr. Justice Field, in Pennoyer v. Neff, 95 U. S. 714, from which it will be sufficient to quote a few sentences:

"Every State possesses exclusive jurisdiction and sovereignty over persons and property within its territory," and "no State, can exercise direct jurisdiction and authority over persons or property without its territory." Page 722. "It is in virtue of the State's jurisdiction over the property of the non-resident situated within its limits that its tribunals can inquire into that non-resident's obligations to its own citizens, and the inquiry can then be carried only to the extent necessary to control the disposition of the property." Page 723. "Where the entire object of the action is to determine the personal rights and obligations of the defendants,—that is, where the suit is, merely *in personam*,—constructive service in this form upon a non-resident is ineffectual for any purpose. Process from the tribunals of one State cannot run into another State, and summon parties there domiciled to leave its territory and respond to proceedings against them. Publication of process or notice within the State where the tribunal sits cannot create any greater obligation upon the non-resident to appear. Process sent to him out of the State, and process published within it, are equally unavailing in proceedings to establish his personal liability." Page 727. "A judgment which can be treated in any State of this Union as contrary to the first principles of justice, and as an absolute nullity, because rendered without any jurisdiction of the tribunal over the party, is not entitled to any respect in the State where rendered." Page 732. "To give such proceedings any validity, there must be a tribunal competent by its constitution—that is, by the law of its creation—to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the State, or his voluntary appear-

ance." Page 733. See, also, D'Arcy v. Ketchum, 11 How. 165; St. Clair v. Cox, 106 U. S. 350, 1 Sup. Ct. Rep. 354; Latimer v. Railway Co., 43 Mo. 105.

It may be admitted that any State may by its laws require, as a condition precedent to the right of a corporation to be organized or to transact business within its territory, that it shall appoint an agent there on whom process may be served, or even that every stockholder in the corporation shall appoint an agent upon whom, or designate a domicile at which, service may be made within the State, and that upon his failure to make such appointment or designation the service may be made upon a certain public officer, and that judgment rendered against the corporation after such service shall bind the stockholders, whether within or without the State. In such cases the service is held binding because the corporation or the stockholders or both, as the case may be, must be taken to have consented that such service within the State shall be sufficient and binding; and no individual is bound by the proceedings who is not a stockholder. Insurance Co. v. French, 18 How. 404; *Ex parte* Schollenberger, 96 U. S. 369; Pennoyer v. Neff, 95 U. S. 714, 735; Vallee v. Dumergue, 4 Exch. 290, 303; Copin v. Adamson, L. R. 9 Exch. 345, 355, 356, 1 Exch. Div. 17.

But such is not this case. Under a former statute of Missouri, an officer holding an execution against a corporation which had been returned unsatisfied might, without further action of the court, levy the same execution upon the property of stockholders within the State. Rev. St. Mo. 1855, ch. 34, §§ 13, 14. In that condition of the law the judgment and execution bound only the property of stockholders on which it was levied within the State, and created no personal liability on their part which could be enforced by suit in another State; and if the officer levied the execution on the property any person not a stockholder he was liable as a trespasser. The very object of the existing statute, as manifest on its face and as declared by the Supreme Court of Missouri, was to change the law so as to leave nothing to the discretion of the officer, and to require the judgment creditor to apply to the court for execution against any person whom he sought to charge as a stockholder, and to have all questions affecting his relations to the corporation and its creditors investigated and determined by the court before an execution should issue against him. Skrainka v. Allen, 76 Mo. 384, 391. And see Holyoke Bank v. Goodman Co., 9 Cush. 576, 583.

In the case at bar the defendant never resided in Missouri, and was not served with process within the State, either upon the original writ against the corporation or upon the motion for execution against him. He denies that he was a stockholder; and the question whether he was one was not tried or decided in the controversy between the plaintiff and the corporation, nor involved in the judgment recovered by one of those parties against the other. Under the statute of Missouri, and upon fundamental principles of jurisprudence, he is entitled to legal notice and trial of the issue whether he is a stockholder before he can be charged with personal liability as such; and personal service of the notice within the jurisdiction of the court is essential to support an order or judgment ascertaining and establishing such liability, unless he has voluntarily appeared or otherwise waived his right to such service, which he has not done in this case.

These views are maintained by a very recent decision of the Supreme Court of Missouri in Wilson v. Railway Co., 18 S. W. Rep. 286, as well as by the English cases expounding St. 8 & 9 Vict. ch. 16, § 36, which was the source of the provision of the existing statute of Missouri. Edwards v. Railway Co., 1 C. B. (N. S.) 409, 14 C. B. (N. S.) 526, and note, citing words of English statute; Ilfracombe Ry. Co. v. Devon & S. Ry. Co., L. R. 2 C. P. 15; Schrimpton v. Railway Co., L. R. 3 C. P. 80; Skrainka v. Allen, 76 Mo. 384, 388, 389. See, also, Howell v. Manglesdorf, 33 Kan. 194, 5 S. W. Rep. 759.

The cases in which judgments against a territorial and municipal corporation have been enforced against its inhabitants, either by direct levy of execution on their property, according to common law or ancient usage, as in New England, or by *mandamus* to levy a tax to pay the judgment, pursuant to express statute, as in Missouri, have no bearing upon this case. Bloomfield v. Bank, 121 U. S. 121, 129, 7 Sup. Ct. Rep. 865, and cases cited; State v. Rainey, 74 Mo. 229.

Judgment affirmed.

NOTE.—The case of Wilson v. St. Louis and San Francisco R. Co., recently decided by the Supreme Court of Missouri, to which reference is made in the principal opinion, is a strong authority upon the point laid down by the Supreme Court of the United States. In that case it was held that the statute of Missouri, authorizing execution on a judgment against a corporation to be issued against a stockholder to the amount of the unpaid balance of his stock upon order of court made "after sufficient notice," etc., contemplates a suit pending in a court which has already acquired jurisdiction of the party to be served with the notice. In such case the remedy of plaintiff is by motion in the nature of an action at law in which defendants being non-residents are to be proceeded against in the usual manner. And in such a proceeding, whether begun by writ or notice, the means employed to obtain jurisdiction of defendants is properly denominated "process," and must conform to the law in respect to the service of process against non-residents. It was also held that a non-resident stockholder is in no sense a party to an action against the corporation to which he belongs so as to obviate the necessity of proceedings against him as a non-resident on an application for execution against him on a judgment against the corporation under the statute. Process by notice against a stockholder in such case is in substance and effect a process of garnishment, and therefore an original proceeding, independent of the judgment against the corporation, so that such notice must be served on a non-resident in the same manner as ordinary process of garnishment.

The court in the Missouri case unequivocally assert that the statute does not authorize personal service of such notice outside of the State on a non-resident in order to the rendition of a personal judgment, but that, if the statute did in terms admit of such a notice, such statute would be wholly void asto such extraterritorial service. This position is sustained by abundant authority, as appears in the principal case. Where a party has property in a State and resides elsewhere, his property is justly subject to all valid claims that may exist against him there; but beyond this, due process of law would require appearance or personal service before the defendant could be personally bound by any judgment rendered. Cooley Const. Lim., 5th ed., page 500; Town of Pana v. Bowler, 12 Am. & Eng. R. R. Cas. 574; Brooklyn v. Insurance Co., 99 U. S. 362; Pennoyer v. Neff, 95 U. S. 714.

The tribunals of one State have no jurisdiction over the persons of other States unless found within their territorial limits. They cannot extend their process into other States, and any attempt of the kind would be treated in every other forum as an act of usurpation without any binding efficacy. Story Confl. Laws, § 546. The authority of every tribunal, and the obligation to obey it are circumscribed by the limits of the territory in which it is established. Galpin v. Page, 18 Wall. 367.

It has been repeatedly held that a personal judgment rendered against a non-resident who has not been served within the State is void. Howell v. Manglesdorf, 33 Kan. 198; Pennoyer v. Neff, 95 U. S. 714; Smith v. McCutcheon, 38 Mo. 415; Denny v. Ashley, 12 Colo. 165.

It is entirely immaterial what is the means or method pointed out by the statute or used to acquire jurisdiction; whether by writ or notice, it is denominated "process." Dwight v. Merritt, 18 Blatch. 306; Middleton Paper Co. v. Rock River Paper Co., 19 Fed. Rep. 252. If process, then the necessity for such process being served in the method prescribed by law, and that such law and such method does not attempt to extend jurisdiction beyond the proper territorial limits is obvious. The Missouri statute was copied from the English statute, 8 and 9 Vict. ch. 16, § 36. The English decisions under this statute require the stockholder to be brought into court by a common law writ. Edwards v. Railroad Co., 1 C. B. (N. S.) 409, 14 C. B. (N. S.) 256; Hitchings v. Railroad Co., 15 C. B. 459; Lee v. Railroad Co., L. R. 6 C. P. 576. The construction of the English courts has been followed in Skrainka v. Allen, 76 Mo. 384; Skouten v. Woods, 57 Mo. 380. Nor is such extraterritorial service under the statute any more effective because the defendant sought to be charged is a stockholder in the corporation against which judgment has been recovered. A stockholder is not in any sense a party to the judgment rendered against a corporation to which he may belong, nor does such judgment bind his property. Hardwick v. Jones, 65 Mo. 54; Hannah v. Bank, 67 Mo. 678; Barclay v. Insurance Co., 26 Mo. 490; Whitman v. Cox, 26 Me. 335; Bank v. Cook, 4 Pick. 405; Adams v. Bank, 1 Greenl. 361; Blackman v. Railroad, 58 Ga. 189. And in England, in Hitchings v. Railroad Co., *supra*, where the proceeding was on the English statute already referred to, by motion for judgment against a debtor of the corporation, Maule, J., said: "This is an attempt to charge a person on execution who is not a party of record." And it was held that, although the act says that execution shall issue, it means after the proper steps have been taken to make the person entitled to be charged a party to the record. In the view of the above quoted authorities, any proceeding against the stockholder subsequent to the judgment rendered against the corporation must be regarded as an original and independent proceeding, as is garnishment process against a mere stranger to the record. But unless the service upon the garnishee be valid in form, and be served within the jurisdiction rendering the judgment, such judgment, when rendered, will not bind him. Norvell v. Porter, 62 Mo. 309; Thompson's Liability of Stockholders, §§ 357-9.

It has also been held in Kansas, on a statute which in many respects is similar to the Missouri statute, that such a motion for execution partakes of the nature of original process, and that if served on a non-resident stockholder such service is invalid, and the party defendant may appear specially and have the resultant order vacated. Howell v. Manglesdorf, 33 Kan. 193.

The case of Pennoyer v. Neff, 95 U. S. 714, cited in the principal case, discusses the whole doctrine of extraterritorial service very fully. After reaching the conclusion that extraterritorial service will not sustain a personal judgment, the opinion proceeds to limit the rule by saying that it does not mean to assert that a State may not authorize proceedings to determine the *status* of one of its citizens towards a non-resident which would be binding in the State, though made without service of process or personal notice to the non-resident in case of divorce, nor that a non-resident entering into a partnership or association within the State cannot be required to appoint an agent to receive service of process in respect to such partnership, association or contracts. Citing Coping v. Adamson, L. R. 9 Exch. 345.

The cases of Hawkins v. Glenn, 131 U. S. 319, and Glenn v. Liggett, 135 U. S. 333, do not in any respect militate against the doctrine as above laid down. In those cases it was held that a court of chancery having jurisdiction in proceedings for the liquidation of an insolvent corporation is vested with the power of making calls upon non-resident stockholders which will be binding upon them to the same extent and in the same way as calls made by the corporate authorities would be. These cases fall far short of saying that the decree of a chancery court making a call is a judgment against either resident or non-resident stockholders charging them with a liability on their stock, irrespective of any defense that they may have on the merits. The office of a call is to fix the time at which the debt of the stockholder becomes due to the corporation. It does not create the liability that arises from the contract of subscription, nor does it cut off any defenses. See Cook, Stock and Stockholders, §§ 104-5.

When the corporate authorities neglect and refuse to make necessary calls to raise funds for corporate obligations, the court will, in behalf of creditors, do what is the duty of the corporation to do in respect to calls. Wait Insolv. Corp. § 617; Beach Corp. § 268.

The decisions in Hawkins v. Glenn, and Glenn v. Liggett, *supra*, were confined to the validity and effect of a call made by a court of equity in liquidation proceedings, and it would seem sufficiently apparent that such a call does not operate as a judgment to conclude the non-resident shareholder.

LYNE S. METCALFE, JR.

BOOK REVIEWS.

DUNLAP'S ABRIDGMENT OF ELEMENTARY LAW.

This work, as the title page tells us, embodies the general principles, rules and definitions of law, together with the common maxims and rules of equity jurisprudence, as stated in the standard commentaries of the leading English and American authors, embracing the subjects contained in a regular law course; collected and arranged so as to be more easily acquired by students, comprehended by justices and readily reviewed by young practitioners. The chief design of the work is to give in the fewest pages the principles and definitions of law and equity, to furnish a review or note-book and *vade mecum* for law students and young practitioners. It comprehends a concise review of Blackstone, and abridgments of the law of pleading, evidence, contracts and equity. There are some pages devoted to "suggestions to students," and there is a law glossary. The fact that the work has gone through many editions is substantial evidence of its merit, and an examination justifies us in the statement that for the purposes for which it was designed it is admirably adapted, being concise, clear and comprehensive. It is a 32mo. volume of nearly five hundred pages, and is published by the F. H. Thomas Law Book Company, St. Louis.

THROOP ON PUBLIC OFFICERS.

This bulky volume of nearly a thousand pages, aims to collect, arrange in a logical and convenient form, apply and comment upon the general rules of law relating to all public officers from the highest to the lowest, and sureties in their official bonds as founded in the adjudications of courts in England and in this country. It does not consider barely the statutory provisions, nor is it intended for use in any particular locality. It treats of public officers generally, of filling an office, of the powers and duties and the exercise thereof, and of judicial proceedings relating to public offices and officers.

The style of the author is clear and interesting, and there is apparent within its pages great labor in the collection of cases and in examining and discussing them. The citation of authorities seems to be exhaustive, and it is plain to be seen that the book has decided merit. The mechanical preparation of the work is particularly fine, and it is published by the J. Y. Johnston Company, New York.

QUERIES.

QUERY NO. 9.

A, being a resident of Indiana, dies, leaving no estate except a small house and lot. D has a judgment taken against A in her life-time, about two years before her death, judgment and costs amounting to $33. Dr. W, who has a claim for medical services and attendance during her last sickness amounting to $63, takes out letters of administration, and files petition to settle as insolvent, and to sell real estate to pay debts. He states in his petition to sell, that the costs of administration will be about $50; that the funeral expenses are $34; that his own claim, which has been duly allowed upon trial thereof, is $63; that there are taxes in the sum of $2.73 against said land; that D has a judgment lien of $33, and asks the court to order the land sold freed from the liens. The court orders accordingly. The land is appraised at $75, and sold for $125. The administrator reports the sale, and in petition sets out the amount realized from sale, $125, and also the claims, to-wit: Costs of administration, $50; funeral expenses, $34; expenses of last sickness, $63; taxes, $2.73; D's judgment, $33. Total, $182.73, and asks the court to direct him in the manner and priority of payment. Is the lien of D's judgment stronger than that of costs or funeral expenses, or expenses of last sickness? Should he direct the lien to be paid first, at the expense of the other four items, or should they be paid in the order given by statute, even if the lien is not paid? Cite authority.

"NIM."

HUMORS OF THE LAW.

A young man was on trial for illegal voting, it being claimed that he voted when under age. His mother was on the witness-stand, and testified that the young man was of age when he voted.

Counsel. How do you know he was of age?

Mother. Because I am his mother and he was born on—(giving the date).

Counsel. Now Mrs. Smith, please tell this jury some particular thing that happened that day that fixes it so firmly in your memory.

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions.

1. ACCIDENT INSURANCE—Res Gestæ.—In an action on an accident insurance policy which insured against "bodily injuries effected through external, violent, or accidental means," it appeared that assured died of pneumonia, with symptoms of the traumatic form. Assured was a minor, and was taken sick while at work; but there was no evidence of any accident at the mine, and assured made no complaint of any injury at the time: *Held*, that evidence of a statement relating to an injury, made by assured to his physcian 36 hours after the physician was first called, was not admissible as part of the *res gestæ*, where such statement did not purport to have been made in connection with the professional treatment.—*Equitable Mut. Acc. Ass'n of Colorado v. McCluskey*, Colo., 29 Pac. Rep. 383.

2. ADMINISTRATION—Allowance of Claims—Interest.—Even though one who, after his claim against an estate was rejected by the executor, recovered a judgment against the estate, to be paid in the due course of administration, was entitled to interest from the date of the rejection to the date of the judgment, the probate court cannot, in ordering the judgment to be paid, allow such interest, where the same was not included in the judgment, since the court, in ordering the claim paid, can base its order only on the transcript of the judgment.—*In re Kennedy's Estate*, Cal., 29 Pac. Rep. 412.

3. ADMINISTRATION — Removal of Administrator. — Where the widow and devisee of the sole heir of M petitioned for the removal of M's administrator, because of his failure to include in his inventory certain personal property, and the latter claims to have purchased the same from the heir, he should be removed, such antagonistic interest disqualifying him to act as administrator.—*Mills v. Mills*, Oreg., 29 Pac. Rep. 443.

4. ADMIRALTY—Maritime Liens—Supplies—Mortgages.—A mortgagee of a vessel, who has taken the mortgage for an antecedent indebtedness only, and without inquiry as to existing liens, is not in the situation of a *bona fide* purchaser, and has no equity superior to a material-man who has a lien for necessary supplies furnished on the credit of a vessel.—*The James T. Easton*, U. S. D. C. (N. Y.), 49 Fed. Rep. 656.

5. ADMIRALTY — Shipping — Discharge of Cargo. — Where a consignee refuses to receive cargo in accordance with the provisions of the charter-party, the ship master is authorized to land and store it at the nearest proper and convenient port, having reference to his own convenience and the apparent best interests of its owner, and always acting prudently and in good faith. —*The Scandinavia*, U. S. D. C. (Cal.), 49 Fed. Rep. 658.

6. ADMIRALTY JURISDICTION—Death by Wrongful Act.—Many persons were killed and others injured by the collision of a river steamboat with a railroad bridge, in Georgia. The boat was libeled by persons injured, and, on petition of the owner, under the limited liability act, the representatives of the persons killed were made parties, and enjoined from suing elsewhere: *Held*, that by this action the owner was estopped from denying the right of such representatives to share in the fund realized from the sale of the boat, if negligence was found, though the Georgia statute, giving a right of action for wrongful death, creates no lien therefor.—*The St. Nicholas*, U. S. D. C. (Ga.), 49 Fed. Rep. 671.

7. ADVERSE POSSESSION—Execution Purchaser.—An execution purchaser of land took possession under the sheriff's deed, and he and his heirs and grantees remained in the actual possession of the land during the life time of the execution debtor, and for twenty years thereafter, paying taxes and receiving rent, etc., to the exclusion of all other persons: *Held*, that such possession, after the death of the execution debtor, was not as co-tenant with the widow, but was adverse, operating as an ouster of the widow at the time of the debtor's death, and the statute of limitations began running against the widow and her heirs from that time.—*Barnes v. Boon*, Ind., 30 N. E. Rep. 509.

8. APPEAL—Advancement of Causes—Municipality a Party. — The mere fact that a suit involves a public question does not give a municipality which is a real party in interest thereto the right to demand its advancement; nor does such fact, and the further facts that the same questions, which have been decided favorably to the city, are involved in several pending suits, or that various other suits may be imminent be cause of not advancing the particular one, nor that the same questions may arise as to a hundred distress warrants held by the city attorney to be enforced.—*Spratt v. City of Jacksonville*, Fla., 10 South. Rep. 734.

9. APPEAL — Reversal.—In ejectment, where proper issues are formed by the pleadings, but the cause is tried and determined on issues not made thereby, and wholly inconsistent therewith the judgment will be reversed.—*Fairchild v. Creswell*, Mo., 18 S. W. Rep. 1073.

10. APPEAL—Review.—An opinion rendered by the Illinois appellate court cannot be relied upon to show what that court decided, even though such opinion has been copied into the record, since such opinions are not properly part of the record.—*Pennsylvania Co. v. Versten*, Ill., 30 N. E. Rep. 540.

11. APPEAL—Waiver of Errors.—An assignment of error on appeal is waived where no error is specifically pointed out in appellant's brief, and such brief, after setting out the assignment of errors, simply states that "the errors are so manifest" as to render argument un necessary.—*Wilson v. Kahn*, Ind., 30 N. E. Rep. 624.

12. ASSIGNMENT FOR BENEFIT OF CREDITORS.—An assignment for the benefit of creditors is not rendered void by reason of its failure to enumerate the articles reserved by the assignor as exempt by law.—*Moore v. Stege*, Ky., 18 S. W. Rep. 1019.

13. ASSIGNMENT FOR BENEFIT OF CREDITORS.—An insolvent executed a chattel mortgage in the usual form, whereby he "sold, assigned, and set over" to the mortgagee, "in trust for the parties" thereinafter named, part of his property to secure certain notes due to sundry parties, therein described, conditioned that the same should be void in case the mortgagor paid the notes, and on default, or on the mortgagee deeming himself insecure, authorizing the mortgagee to take possession, and sell without notice, and pay the notes, interest, attorney's fees, and other expenses, and return the surplus: *Held*, that the instrument was, in substance and effect, an assignment for the benefit of and in trust for creditors, and void.—*Maxwell v. Simonton*, Wis., 51 N. W. Rep. 869.

14. ASSOCIATION—Change of Venue.—An "association," though not invested with corporate powers, is within Const. art. 12, § 16, which provides that a "corporation or association" may be sued in the county where the cause of action accrues; and in an action against a mining company in the county where the alleged injury occurred, it is no objection to the venue that the complaint does not show that the company has corporate powers.—*Kendrick v. Diamond Creek Consolidated Gold Min. Co.*, Cal., 29 Pac. Rep. 324.

15. ATTORNEY'S LIEN ON JUDGMENT—Set-off.—The attorney of a plaintiff who has recovered a judgment in this court has a claim upon it for his taxable costs and court charges, which is to be preferred to the defendant's right to offset a judgment held by him against the plaintiff.—*Phillips v. MacKay*, N. J., 23 Atl. Rep. 941.

16. BAILMENT—Removal of Goods Bailed.—Defendants stored a hearse at plaintiff's livery stable. The hearse was insured, and one of the conditions of such insurance was that it should be kept at this stable. Plaintiff knew nothing of the insurance, nor did he contract to keep the hearse in any particular place. A few months after the hearse was left in his charge, plaintiff, without informing defendants, placed the hearse in another stable, where it was destroyed by fire. It was not claimed that its removal had increased the chances of loss or damage: *Held*, that plaintiff was guilty of no negligence for which defendants could recover as it was their duty to have informed plaintiff of the insurance and its conditions.—*Bradley v. Cunningham*, Conn., 23 Atl. Rep. 932.

17. BANKS—Insolvency—Receiving Deposits.—Rev. St. 1879, § 1350, as amended by Act 1887, makes it unlawful for the officers of any bank "or the owner, agent, or manager of any private bank or banking institution," to receive deposits knowing such bank to be insolvent: *Held*, that the owner of a private bank was liable under such act, though he was doing an unauthorized business, not having complied with the provisions of the statute in the organization of his bank.—*State v. Buck*, Mo., 18 S. W. Rep. 1113.

18. BANKS AND BANKING—Collections.—Plaintiff and defendant banks for several years had acted as agents for each other in the collection of checks, notes, and drafts, the practice being for each to credit the other for checks when received, and for drafts and notes when advised of their payment. When a check was returned unpaid after being credited, the amount thereof was charged back again. The amounts thus collected were mingled with the general funds of the bank. Plaintiff sent defendant a note for "collection and credit," which, on maturity, was paid by a check, and credit was immediately given on the books. But defendant failed, and the check passed into the hands of the receiver: *Held* that, in view of the course of dealing, the two banks stood in the relation of debtor and creditor with respect to the amount of the check, and it became a part of the assets of the bank.—*Franklin County Nat. Bank v. Beal*, U. S. C. C. (Mass.), 49 Fed. Rep. 606.

19. BOND — Pleading—Variance.— In an action on a bond alleged to have been executed by certain persons, proof that it was executed by a part only of the said persons is not a material variance, within the meaning of Code Civil Proc. § 469, since those who executed it could not thereby have been misled to their prejudice in making a defense.—*Kurtz v. Forguer*, Cal., 29 Pac. Rep. 413.

20. BOUNDARIES—Monuments.—Where, in an action to recover possession of land, the evidence is conflicting as to the true location of a station, which is described as a natural monument, and is located in a different place by the courses and distances, the natural monument will control.—*Stoll v. Beecher*, Cal., 29 Pac. Rep. 327.

21. BOUNDARIES—Monuments and Courses.—In tracing geographical lines, the general rule is that "monuments control courses, and a specific course will control a general course;" but, where a moument is uncertain, a general course may be taken into consideration, in connection with other facts and circumstances, for the purpose of ascertaining and identifying such monument.—*Hollenbeck v. Sykes*, Colo., 29 Pac. Rep. 380.

22. BUILDING CONTRACT. — A provision in a building contract that the value of changes made in the building is to be estimated by the architect, and shall be final, is conclusive on the parties if the agreement is carried out in good faith. A contract of this kind is based on the presumption that the architect will use his professional knowledge in an honest endeavor to make a fair adjustment of such changes. — *Anderson v. Imhoff*, Neb., 51 N. W. Rep. 854.

23. CARRIERS—Bill of Lading.—An assignee of a bill of lading cannot sue the carrier in his own name for failure to transport and deliver the goods according to the contract, since bills of lading are non-negotiable. — *Knight v. St. Louis. I M. & S. Ry. Co.*, Ill., 30 N. E. Rep. 543.

24. CERTIORARI—Acts of County Board.—The action of the county board of supervisors in borrowing money, and issuing county bonds therefor, for the purpose of improving highways in a town, (Laws 1869, ch. 855, § 1), is legislative and not judicial, and cannot be reviewed on *certiorari*.—*People v. Board of Sup'rs of Queens County*, N. Y., 30 N. E. Rep. 488.

25. CHARITABLE BEQUESTS—Description of Legatee.—A bequest in remainder "to any responsible corporation in this city existing at the time of the death" of the precedent legatee "whose permanent fund is established by its charter for the purpose of ameliorating the condition of the Jews in Jerusalem, Palestine, by promoting among them education, arts, and sciences and by learning them mechanical and agricultural vocations" does not pass to a corporation whose object, as shown by its charter, is to contribute "to the relief of the indigent Jews in Jerusalem, Palestine," of which testator, a lawyer, was an incorporator, and president at the time of executing the will, and which the will does not mention, though there is no other corporation in existence at the precedent legatee's death which can take the legacy.—*Riker v. Leo*, N. Y., 30 N. E. Rep. 598.

26. CONSTITUTIONAL LAW — Judicial Powers. — Laws 1891, p. 633, which empowers certain district court judges to appoint a bridge committee, is not in violation of article 3 of the constitution, which prohibits the judicial department of the government from exercising the functions of the executive. — *State v. George*, Oreg., 29 Pac. Rep. 356.

27. CONSTITUTIONAL LAW — Jury Trial.—Hill's Code, § 249, subd. 2, as amended by Act 1891, which provides that in certain actions, including all actions sounding in damages or tort, if no answer be filed within the time specified, default may be entered against defendant, and plaintiff may apply at a subsequent term for the relief demanded in the complaint, and in all such cases "the court, without the intervention of the jury, shall assess the damages which he shall recover," etc., is not repugnant to the constitution, which declares that "in all civil cases the right of trial by jury shall remain inviolate," since the assessment of damages on a confession by defendant of the cause of action is not a "trial" of the action. — *Dean v. Willamette Bridge Ry. Co.*, Oreg., 29 Pac. Rep. 440.

28. CONTRACT — Advertising Idea—Property Rights.—Where an inventor, in order to induce a person to employ him, communicates in confidence a valuable system of advertising, without any agreement as to compensation therefor, and the latter refuses to employ him, but uses the idea, the inventor cannot recover the value of such use; his property in it being lost by the disclosure. — *Bristol v. Equitable Life Assur. Soc. of United States*, N. Y., 30 N. E. Rep. 506.

29. CONTRACTS—Consideration.—The liability incurred in purchasing property upon the faith of a promise made by another to contribute a certain sum in part payment of the price is a sufficient consideration to make the promise binding. — *Steele v. Steele*, Md., 23 Atl. Rep. 959.

30. CONTRACTS — Consideration.— Where defendants, stock-brokers, were carrying a "short" sale of stock for plaintiff, and the stock began to rise, whereupon plaintiff wished to cover his sale, and go "long" on the stock, which defendant advised him not to do, the fact that plaintiff, to his pecuniary loss, refrained from doing as he wished, was sufficient consideration for defendants' promise to carry the stock without additional margin until plaintiff could get out without loss.—*Rogers v. Wiley*, N. Y., 30 N. E. Rep. 582.

31. CONTRACT — Estimates of Engineer. — Where the commissioners of a county award a contract for the construction of a gravel road, the estimates of the county engineer as to the cost of the work, though stipulated to be such in the contract, are not conclusive, but are merely *prima facie* correct.—*McCoy v. Able*, Ind., 30 N. E. Rep. 528.

32. CONTRACT — Interpretation. — A contractor who agrees with a bridge company to build the bridge in consideration of $10,000 of its stock and certain notes secured by a mortgage on the bridge, and sublets a part of the work in consideration of the stock, may afterwards make a *bona fide* foreclosure of the mortgage, and buy in the bridge, without incurring any liability to the subcontractor, or giving him any interest in the bridge, although the latter's stock is rendered utterly valueless by the operation.—*McLane v. King*, U. S. S. C., 12 S. C. Rep. 590.

33. CONTRACT—Measure of Damages.— Where plaintiffs leased a lot to defendant, who agreed to pay the taxes thereon for the use of the same, and neglected so to do, whereupon the property was sold for taxes,

and plaintiffs lost title thereto, the proper measure of plaintiff's damage is the amount of the tax unpaid, together with interest thereon. — *Fountain v. Schulenberg & Boeckler Lumber Co.*, Mo., 18 S. W. Rep. 1147.

34. CONTRACT OF SALE— Rescission.—An action to recover the value of property transferred by plaintiff to defendant, as part payment on the contract for the purchase by plaintiff from defendant of chattels, may be maintained without a previous restoration of the proceeds of certain of the chattels which plaintiff had sold with defendant's consent, and without a demand on defendant for the amount claimed, defendant having assumed to rescind the contract by retaking and selling the chattels, title to which he had by his contract with plaintiff retained as security for full performance of the contract.—*Brewster v. Wooster*, N. Y., 30 N. E. Rep. 489.

35. CONVERSION—Execution on Invalid Judgment.—Persons who cause execution on an invalid judgment to be issued and levied are liable in an action by the owner of the property seized for conversion.—*Marks v. Wright*, Wis., 51 N. W. Rep. 882.

36. CORPORATIONS—Contracts.—In an action by a foreign corporation, where it is not alleged in the pleadings or shown that the contract sued on was made in Arkansas, or in the course of business done there, evidence that plaintiff has been transacting business in that State contrary to the statutes is inadmissible.—*White River Lumber Co. v. Southwestern Imp. Ass'n*, Ark., 18 S. W. Rep. 1055.

37. CORPORATIONS—Power to Confess Judgment.—The right to confess judgment by a private corporation is a right incident to its power to sue and its liability to be sued.—*Shute v. Keyser*, Ariz., 29 Pac. Rep. 396.

38. CORPORATIONS — Stockholders—Subscriptions.—A partnership was converted into a corporation with a capital stock of $150,000, the certificate of incorporation reciting that $50,000 had been paid in. All the partnership assets were turned over, and immediately afterwards a call was made by the directors for a stock payment for $4,000, the resolution declaring that the payment by the stockholders of their respective proportions thereof would be in full payment of the entire capital stock: *Held*, that this resolution was not conclusive as against creditors, and, upon the failure of the corporation, the stockholders were liable for any balance not actually paid in in cash or its equivalent.—*Camden v. Stuart*, U. S. S. C., 12 S. C. Rep. 585.

39. COUNTIES — Negligence of Prison Officers. — The care and control of prisons being within the "police power," a county is not liable for the failure of its officers to keep the county jail in a healthy condition.—*Board of Com'rs of Greene County v. Boswell*, Ind., 30 N. E. Rep. 534.

40. COUNTY BONDS — Mandamus.— *Mandamus* will not lie against a county court to compel the levy of a tax, but must be brought against the individual officers intrusted with the performance of that duty. — *Montgomery County v. Menifee County Court*, Ky., 18 S. W. Rep. 1021.

41. COUNTY BONDS — Recital — Notice. —A recital in county bonds that they are issued "pursuant to an order of the county court" puts all persons dealing in the bonds upon inquiry as to the terms of the order.—*Post v. Pulaski County*, U. S. C. C. of App., 49 Fed. Rep. 628.

42. COURTS—Special Judge.—A party to an action who appears and tries the action before a judge *pro tempore* is estopped to deny the validity of the appointment of such judge.—*State v. Sachs*, Wash., 29 Pac. Rep. 446.

43. COURTS — Special Judges. — Under Rev. St. 1879, § 1107, regulating the election of special judges, the record from a circuit court, over which a special judge presided, need not contain the official oath of such judge, or recite that he had the qualifications of a circuit judge.—*State v. Gamble*, Mo., 18 S. W. Rep. 1111.

44. CRIMINAL EVIDENCE— Declarations of Prosecuting Witness.—On a trial for an assault, the complaining witness appeared to be afraid to testify. The deputy district attorney who conducted the examination in the police court testified for defendant as to certain facts at that examination, and on cross-examination was asked whether the complaining witness appealed to law for protection; to which he answered: "Yes, sir; he made certain statements to me; he laid the facts before me, and then said he was afraid to testify." The evidence did not connect defendant with any threats or hostile movements towards the witness: *Held*, that the admission of such evidence, against defendant's objection, entitled him to a new trial.—*State v. Day*, Oreg., 29 Pac. Rep. 352.

45. CRIMINAL EVIDENCE — Murder — Confession.—A voluntary confession of murder is not inadmissible because made to free defendant's sister, then under arrest for the crime, from suspicion, especially where defendant testifies in self-defense to every fact contained in the confession, and the sister testifies that he acknowledged to her substantially the same facts immediately after the killing. — *People v. Smalling*, Cal., 29 Pac. Rep. 421.

46. CRIMINAL EVIDENCE—Prize fighting.—An agreement to engage in a prize-fight is a conspiracy to commit a crime; and the declarations of either party with reference to the common object, or in furtherance of the criminal design, while engaged in its prosecution, are competent evidence against the other, though the agreement was made by or through backers or other representatives of the principals, and the latter were unknown to each other.—*Seville v. State*, Ohio, 30 N. E. Rep. 621.

47. CRIMINAL LAW—Bill of Exceptions.—At common law, a writ of error did not lie to correct an error which was not apparent on the record, and the statute of 13 Edw. I. was enacted to provide a remedy for reviewing decisions of the trial court on matters *in pais*, to which exception was taken; and strictly, at the common law, it was doubted if this statute applied to any criminal case.—*Brown v. State*, Fla., 10 South. Rep. 736.

48. CRIMINAL LAW — Circumstantial Evidence.—On a trial for grand larceny it was reversible error to instruct, on the subject of circumstantial evidence, that the jury should be regulated by the superior number of probabilities on the one side or the other, whether the amount of such probabilities be expressed in words or arguments, or by figures and numbers.—*People v. Dilwood*, Cal., 29 Pac. Rep. 420.

49. CRIMINAL LAW—Cross-Examination of Defendant. —A defendant in a criminal case, who avails himself of the privilege given by Code Crim. Proc. § 393, to "testify as a witness in his own behalf," becomes a witness generally in the case, subject to the ordinary rules of examination, so that it is no violation of the provision of Const. art. 1, § 6, that no person shall be compelled in any criminal case to be a witness against himself, that the State is allowed to cross-examine him relative to facts not brought out in his examination-in-chief, or affecting his credibility, but pertinent to the issue.—*People v. Tice*, N. Y., 30 N. E. Rep. 494.

50. CRIMINAL LAW—Homicide.—Under Mansf. Dig. § 1551, providing that an attempt, in a violent manner, to enter another's house, for the purpose of offering personal violence to anyone dwelling therein, shall be a justification of homicide, it must reasonably appear to the person committing the homicide that the entrance of his assailant into the house will expose him to the danger of losing his life, or of receiving great bodily injury, and he should prevent the entry by means not fatal, if consistent with his own safety.—*Brown v. State*, Ark., 18 S. W. Rep. 1051.

51. CRIMINAL LAW — Life Insurance — Constitutional Law.—Laws 1890, ch. 401, which makes it a criminal offense for an agent of a life insurance company to pay a rebate as an inducement to insure in his company, is not unconstitutional, as an abridgement of the natural rights and personal liberty of such agent in the conduct of his business.—*People v. Formosa*, N. Y., 30 N. E. Rep. 492.

52. CRIMINAL LAW—Robbery.—It is not robbery for a person who has lost money at an unlawful game to point a pistol at the winner, and compel him to return the money, since, under the Kentucky law, the winner is not ever entitled to possession of the money.—*Thompson v. Commonwealth*, Ky., 18 S. W. Rep. 1022.

53. CRIMINAL PRACTICE—Homicide—Time of Death.—Where the indictment alleges that the fatal blow was struck October 25, 1890, and the caption of the indictment shows that it was returned at February Term, 1891, which term could not, under the law, have continued to October 26, 1891, the indictment shows that the death occurred within a year and a day after the alleged fatal blow.—*Brassfield v. State*, Ark., 18 S. W. Rep. 1040.

54. CRIMINAL TRIAL—Comments on Evidence.—In a criminal case it is the duty of the judge to present the evidence to the jury in such light, and with such comments, that the jury may see its relevancy and pertinency to the particular issue on which it is admitted, and the court should not refrain from a just, clear and accurate presentation of the evidence simply because, when so presented, it may be regarded by the jury as bearing hardly on the accused.—*People v. Fanning*, N. Y., 30 N. E. Rep. 560.

55. CRIMINAL TRIAL—Defendant as Witness.—On a trial for larceny, where the defendant had testified in his own behalf, it was proper, for the purpose of discrediting him, to ask him on cross-examination whether he had ever been convicted of stealing, and whether he had been arrested for breaking into a house and stealing coffee, and sent to the work-house therefor.—*Burdette v. Commonwealth*, Ky., 18 S. W. Rep. 1011.

56. DECEIT—Measure of Damages.—In an action for damage for deceit in the sale by defendant to plaintiff of mining stock, the proper measure of damage is the difference between the price paid and the real value of the stock at the time of the sale.—*High v. Berret*, Pa., 23 Atl. Rep. 1004.

57. DEED—Consideration—Parol Evidence.—Though the expressed consideration of a deed to a railroad company is "benefit to be derived from the building of the road and one dollar paid," the grantor may, by parol evidence, show that the real consideration was the company's promise to build a depot on the land.—*Louisville, etc. Ry. Co. v. Neafus*, Ky., 18 S. W. Rep. 1030.

58. DEED—Delivery—Husband to Wife.—A deed by a husband directly to his wife without the intervention of a trustee, and delivered to her, vests an equitable title to the land in the wife, and, if she subsequently obtains a divorce, the law executes the use, and transfers to her the legal title.—*Pitts v. Sheriff*, Mo., 18 S. W. Rep. 1071.

59. DEED—Estoppel—Trust.—Where one without title has conveyed land in his own right, with covenants warranting the title, and afterwards the title comes to him in the capacity of a trustee for a different person, the newly-acquired title does not inure to the former grantor of such covenantor, nor pass to him. The estoppel arises only where the covenantor takes the new title in the same right in which he had previously conveyed it.—*Dewhurst v. Wright*, Fla., 10 South. Rep. 682.

60. DEED—Misnomer.—Where a deed was duly signed and acknowledged by "Samuel S. Jenkins," the fact that the grantor's name was written in one part of the deed as "Samuel S. Jones" will not invalidate it, such error being clearly a blunder of the conveyancer.—*Jenkins v. Jenkins*, Pa., 23 Atl. Rep. 985.

61. EJECTMENT—Restitution.—Upon reversal by writ of error of a judgment in ejectment, by virtue of which the plaintiff obtained possession of the premises in dispute, the defendant is entitled to a writ of restitution, in order that he may be restored to the possession of the premises, together with the issues thereof from the time of entry under the erroneous judgment.—*Frey v. Heileman*, N. J., 23 Atl. Rep. 943.

62. ELECTIONS—Quo Warranto—Title to Office.—Where there has been a mistake in the canvass of votes by the board of canvassers, the remedy by a recount is not exclusive, and the courts have jurisdiction in *quo warranto* proceedings to inquire into the facts and go behind the returns to determine the right to an office.—*State v. Meilike*, Wis., 51 N. W. Rep. 875.

63. EMINENT DOMAIN.—The general authority given by Pub. St. ch. 49, to towns to lay out ways, will warrant the construction by a town of a way along a strip already condemned by a city for the laying of its water-pipes, there being no act prohibiting it, and the use of the land for laying water-pipes being in no way inconsistent with the use for a way, and there being no material interference between such uses, and no probability that there will be any such interference—*City of Boston v. Town of Brookline*, Mass., 30 N. E. Rep. 611.

64. EMINENT DOMAIN—Compensation.—An ordinance which authorizes the taking of private property for public use must provide for compensation. Private property cannot be taken for public use without securing to the owner the compensation the jury of freeholders find allowable.—*Calder v. Police Jury of Terrebonne*, La., 10 South. Rep. 726.

65. EMINENT DOMAIN—Costs.—Under the constitution, respondent, whose property is taken against his will through condemnation proceedings, is entitled to recover his court costs reasonably incurred in such proceedings. The common law rule forbidding the recovery of costs by either party in actions at law does not control.—*Dolores No. 2, etc. Co. v. Hartman*, Colo., 29 Pac. Rep. 378.

66. EMINENT DOMAIN—Damages.—In proceedings to condemn a part of certain land, on which stood a building occupied by the land-owner as his place of business, the court erred in refusing to charge that the owner was entitled to recover for the loss of profits arising from the loss of business during the time it would necessarily be interrupted.—*Comrs. of Parks and Boulevards v. Moesta*, Mich., 51 N. W. Rep. 903.

67. ESTOPPEL IN PAIS—Assertion of Title.—Where a person conveys a portion of his land to a railway company for the purpose of constructing a road thereon, and with full knowledge permits the company to construct a railroad through other portions of his land also, and allows 16 years to elapse after the completion of the road before making any objection thereto, such person cannot recover such land in ejectment.—*Dodd v. St. Louis, etc. Ry. Co.*, Mo., 18 S. W. Rep. 1117.

68. EVIDENCE—Contract.—In *assumpsit* for coal sold and delivered, evidence of the market value of the coal at the time of delivery was properly excluded where, by a contract between plaintiff and defendant, the price of such coal was fixed at the average price per ton paid by a certain railroad company, and the production of the books and accounts of such company could have been compelled by *subpœna duces tecum*, and the price determined therefrom.—*Lucas Coal Co. v. Delaware, etc. Co.*, Pa., 23 Atl. Rep. 990.

69. EVIDENCE—Secondary Evidence.—When oral evidence has been introduced concerning the purchase of a school-land certificate by the plaintiff from a defendant, and it is established by the cross-examination of the defendant that the contract for such purchase was in writing, it is error for the trial court, upon proper motion being made, to refuse to exclude all oral evidence concerning the transaction, after such written contract had been read in evidence.—*Rich v. Northwestern Cattle Co.*, Kan., 29 Pac. Rep. 466.

70. EXECUTION — Injunction.—The defendants in execution, who have retained the free use of the property seized, have not sustained any injury, and are not entitled to an injunction.—*Citizens' Bank of Louisiana v. Webre*, La., 10 South. Rep. 728.

71. EXECUTION—Sheriff's Deed.—Where the owner of land platted it into lots, and it was afterwards sold under execution, and the sheriff's deed therefor contained the same description as former deeds for the property, such description was sufficiently definite and certain, though no attention was therein paid to the

plat of the land as made by the owner.—*Hays v. Perkins*, Mo., 18 S. W. Rep. 1127.

72. EXECUTION SALE.—Where defendants in execution pay to the county, to redeem lands sold under the execution, the full amount due, including the costs taxed, and one who is entitled to fees included in such costs sues the county therefor, the county cannot object that the fees were excessive or illegal, but is liable for the full amount of the fees taxed; and if the execution was only satisfied in part, it is liable for such proportion of the fees taxed as the amount thereof bears to the entire amount which was due from the defendants in execution.—*McDonald v. Logan County*, Ark., 18 S. W. Rep. 1047.

73. EXECUTORS — Proof of Appointment.—When an executrix is appointed in another State, on the estate of a person dying out of this State, and no executor, executrix, or administrator thereon is appointed in this State, the foreign executrix may file an authenticated copy of her appointment in the probate court of any county in this State in which there is real estate of the deceased, and then may be authorized, under an order of the court, to sell the real estate for the payment of debts of the decedent and the charges of administration, in the manner and upon the terms and conditions prescribed by the statute of this State.—*Higgins v. Reed*, Kan., 29 Pac. Rep. 389.

74. EXECUTORS AND ADMINISTRATORS—Commissions.—Where an executor is directed to invest a certain fund, and from the income to pay a fixed annuity to a certain person, but no provision is made for the payment of the executor's commissions and expenses while he is acting as trustee in the disposition of the said fund, payment must be made out of the income of the fund, and not out of the estate generally.—*Grinnell v. Baker*, R. I., 23 Atl. Rep. 911.

75. FEDERAL COURTS — Admission of States.—The question whether causes, which were of a nature to be cognizable either in the federal or State courts, were "pending" in the territorial courts of Dakota at the time North Dakota was admitted, so as to be transferable on request to the federal circuit court, under the provisions of section 23 of the enabling act, is to be determined independently of Comp. Laws, Dak. T. § 5343, which declares that actions shall be deemed to be pending until the expiration of the two years allowed for an appeal; and such causes were not transferable after judgment, unless some further proceedings were being had therein.—*Glaspell v. Northern Pac. R. Co.*, U. S. S. C., 12 S. C. Rep. 593.

76. FEDERAL COURTS — Circuit Court of Appeals.—Where a pending appeal in the supreme court and a cause before the circuit court of appeals can, by reason of their connection, be heard together, and the district and perhaps the circuit judges are, under Act Cong. March 3, 1891, disqualified to pass on the case from having heard the same or similar questions in the court below, it is a proper exercise of discretion to certify the questions involved to the supreme court, under section 6 of that act.—*Farmers' & Merchants' State Bank v. Armstrong*, U. S. C. C. of App., 49 Fed. Rep. 600.

77. FEDERAL COURTS—Circuit Court of Appeals—Jurisdiction.—Under Acts Cong. March 3, 1891, § 2, "hereby creating" circuit court of appeals, and joint resolution March 3, 1891, providing that the first meeting of the new court be held the third Tuesday of June, 1891, but allowing appeal to existing circuit courts until July 1st an appeal taken to the new court June 24th will not be dismissed, the right having existed from the passage of the act.—*New York, L. E. & W. R. Co. v. Bennett*, U. S. C. C. of App., 49 Fed. Rep. 598.

78. FRAUD—Proof.—Fraud must be "clearly" proved, and it is proper so to instruct the jury.—*Jones v. Lewis*, Penn., 23 Atl. Rep. 985.

79. FRAUDS, STATUTE OF — Sale of Land.—Where a land-owner verbally agrees to convey land to a railroad company, on condition that the company will construct a side track thereon, and erect station buildings on adjoining land, evidence that the company erected the station buildings, as agreed, constructed the track on part of the land, used the rest as a roadway, and spent several hundred dollars in grading and macadamizing it, warrants a finding that the contract was sufficiently performed to take it out of the statute of frauds.—*Hayes v. Kansas City, Ft. S. & G. R. Co.*, Mo., 18 S. W. Rep. 1115.

80. FRAUDULENT CONVEYANCES.—A debtor, in failing circumstances and contemplating insolvency, may pay or secure an indebtedness created within nine months prior thereto; and a chattel mortgage executed to secure a *bona fide* debt created within said time, and which is not tainted with fraud, will not be held void for the reason that such debtor, within a few hours thereafter, makes a general assignment of all his property, including that mortgage as aforesaid for the benefit of his creditors.—*Brown v. Williams*, Neb., 51 N. W. Rep. 851.

81. FRAUDULENT CONVEYANCES—Securing Creditor.—A failing debtor may prefer one creditor to another by giving the former a mortgage to secure an existing indebtedness, where it is accepted in good faith by the creditor for the sole purpose of such security.—*Schroeder v. Bobbitt*, Mo., 18 S. W. Rep. 1093.

82. GARNISHMENT—Partners.—Money alleged to be due from one partner to another, as the latter's share of the profits of the partnership, cannot be garnished by a judgment creditor of the latter, unless the affairs of the partnership have been settled, and an admitted balance is due.—*Ryon v. Wynkoop*, Penn., 23 Atl. Rep. 1002.

83. GIFT—Causa Mortis.—Where, a short time before death, decedent hands a certificate of deposit to another for safe-keeping, requesting him to see that decedent's children got the money in case he died, there is not a valid gift *causa mortis*.—*Dunn v. German-American Bank*, Mo., 18 S. W. Rep. 1139.

84. HIGHWAYS — Openings—Damages.—Since the statute providing for opening a public road on petition to the county court authorizes the commissioners, in estimating the damages, to take into consideration the advantages, as well as the disadvantages, resulting from the establishment of the road to the land over which it runs, the owner of such land cannot enjoin the establishment of the road on the ground that he has not been allowed any damages, where the commissioners have determined that the benefit peculiar to the land not taken is a full equivalent for the land taken, and that such owner is not entitled to any damages.—*Lingo v. Burford*, Mo., 18 S. W. Rep. 1081.

85. HOMESTEAD.—A house built in the business part of a town, and used principally as a store-building though the owner sleeps in a small back room and takes his meals elsewhere, is not a homestead.—*Garrett v. Jones*, Ala., 10 South. Rep. 702.

86. HOMESTEAD — Abandonment.—Plaintiff executed and duly recorded a declaration of homestead upon a certain house and lot owned by him, and afterwards built a large addition to the house, and then leased the greater part thereof to a woman, who used such part for a boarding-house. Plaintiff in his lease reserved several rooms, where he and his family continued to live, though they took their meals with the lessee: *Held*, that plaintiff did not thereby lose his right of homestead.—*Heathman v. Holmes*, Cal., 29 Pac. Rep. 404.

87. HOMESTEAD — Abandonment. — Where a widow, having a minor child and entitled to hold a homestead, as exempt, claims it as her sole property, and conveys it in fee-simple, she abandons the homestead.—*Sanson's Ex'rs v. Harrell*, Ark., 18 S. W. Rep. 1047.

88. HOMESTEAD — Business Premises.—Under Const. Tex. Art. 16, § 51, an urban homestead may include not only a house and lot used as a family residence, but also other lots contiguous thereto, which are used by the head of the family for business purposes, provided that both together do not exceed $5,000 in value, exclusive of improvements.—*Webb v. Hayner*, U. S. D. C. (Tex.), 49 Fed. Rep. 601.

89. HUSBAND AND WIFE — Husband's Debts.—Where plaintiff, a married woman, leased land, part of her

separate estate, and voluntarily caused notes for the rent to be executed to defendant, and delivered them to him in extinguishment of her husband's debts, she cannot afterwards recover the notes or their amounts.—*Gillespie v. Simpson*, Ark., 18 S. W. Rep. 1050.

90. INJUNCTION—Trespass.—A railroad company took possession of a city lot, and was using it for purposes connected with the construction of a tunnel: *Held*, that the owner of the lot was not entitled to an injunction, as the purpose to which the lot was applied by the railroad company was a trespass which went to the destruction of the property in the character in which it was enjoyed by such owner.—*Baltimore B. R. Co. v. Lee*, Md., 23 Atl. Rep. 901.

91. INSANE PERSONS — Jurisdiction — Appearance.—Where, in proceedings to have defendant adjudged of unsound mind and incapable of managing her estate, and for the appointment of guardian, no notice was served on defendant, and she herself does not appear, but she is represented in court by counsel, such appearance, even if unauthorized, is binding on her until set aside.—*Martin v. Motsinger*, Ind., 30 N. E. Rep. 523.

92. INSOLVENCY — Attachment. — Where a domestic creditor attaches real and personal property in foreign States, and foreign creditors afterwards attach the same, the debtor's assignee in insolvency, subsequently appointed, can compel the former creditor neither to carry on the suit as to the realty, nor to allow the assignee to prosecute it, since an assignment in insolvency does not convey foreign land.—*Chipman v. Manufacturers' Nat. Bank*, Mass., 30 N. E. Rep. 610.

93. INSOLVENCY—Validity of Conveyance.—An insolvent borrowed money with which to pay a debt, agreeing to convey certain land as security, and conveyed the same about two weeks thereafter, the delay being occasioned by his absence: *Held*, that the conveyance was contemporaneous with the loan, and was not in contravention of the insolvency law, although the grantee had reason to believe that the grantor was insolvent, and knew to what purpose the money was to to be applied, the amount of the insolvent's liabilities and assets and the condition of his business not appearing.—*Buss v. Boutelle*, Mass., 30 N. E. Rep. 607.

94. INSURANCE—Conditions.—A stipulation in a policy of insurance, limiting the time within which suit may be commenced thereon, is binding on the policy holder; and where the provision in the policy is that "no action shall be sustained thereon unless commenced within six months next after the fire," the limitation shall commence to run from the date of the fire, and not from the expiration of the period within which the company may pay the loss.—*State Ins. Co. of Des Moines v. Stoffels*, Kan., 29 Pac. Rep. 479.

95. INSURANCE—Conditions.—When, in a policy of insurance, the parties have stipulated "that no suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity, unless commenced within twelve months next ensuing after the fire," no recovery can be had unless the action in which recovery is sought is commenced within such a time, and the statute of limitations of this State, and their exceptions, have no application to the conventional limitation prescribed by the policy.—*McElroy v. Continental Ins. Co. of City of New York*, Kan., 29 Pac. Rep. 478.

96. INSURANCE — Conditions — Incumbrances.—An insurance policy, conditioned to be void if the assured incumbered the property without the company's consent, is not vitiated by incumbrances made by other persons, nor by those made by assured, not exceeding the original incumbrance when the insurance was effected.—*Weiss v. American Fire Ins. Co. of Philadelphia*, Penn., 23 Atl. Rep. 991.

97. INSURANCE—Proofs of Loss—Pleading.—In an action on an insurance policy to recover a loss by fire, the plaintiff must aver and prove that proofs of loss were furnished within the time required by the terms of the policy or that the conditions requiring such proofs has been waived by the company; and if at the trial there is a total failure to prove either that the proofs were duly made, or that they were waived, it is the duty of the trial court to sustain a demurrer to the evidence and dismiss the action.—*Burlington Ins. Co. v. Ross*, Kan., 29 Pac. Rep. 469.

98. INTERNATIONAL LAW—Neutrality Laws.—The steamship Itata, a vessel belonging to a foreign insurgent party, but not being a vessel of war, came into the territory of the United States, and there received on board a cargo of munitions of war purchased there by an agent of the insurgents. The cargo was not for the equipment of the Itata, but was to be transported to her country, for the use there of the said insurgents: *Held*, that the vessel was not liable, nor was her cargo liable, to forfeiture under section 5283, Rev. St. U. S., for violation of the neutrality laws.—*The Itata*, U. S. D. C. (Cal.), 49 Fed. Rep. 646.

99. INTOXICATING LIQUORS—Civil Damage.—Acts 1887, No. 313, § 20, provides that every "parent who shall be injured, in person or property or means of support, by reason of the intoxication of any person, shall have a right of action" against the person who shall, by furnishing intoxicated liquor, have caused or contributed to such intoxication: *Held*, that plaintiff was entitled to recover for the death of her adult son caused by intoxication resulting from liquor furnished him by defendant, where the son actually contributed to plaintiff's support, though there was no legal obligation on him to do so.—*Eddy v. Courtright*, Mich., 51 N. W. Rep. 887.

100. INTOXICATING LIQUORS — Delivery in Another County.—Defendant, having a wholesale bottler's license in P county, received in the regular course of business at his place in that county orders from retailers in M county. On receipt of the order the liquor was set apart to the purchasers, and charged to them on defendant's books, and was then delivered to them in M county, by means of defendant's own wagon: *Held*, that defendant was not guilty of selling liquor in M county, since the sale, as between him and the purchasers, was completed in P county.—*Commonwealth v. Hess*, Penn., 23 Atl. Rep. 977.

101. INTOXICATING LIQUORS—Sales to Minors.—In a prosecution for selling liquor to a minor, the burden is on defendant to show the consent of the parent or the person having control of the minor, rather than on the prosecution to show the want of such consent.—*Frieberg v. State*, Ala., 10 South. Rep. 703.

102. JUDGMENT.—Where a judgment was rendered on a bond against several obligors, one of whom was dead when the suit was brought, the other judgment defendants cannot, at a subsequent term, have the judgment set aside, on that account as to themselves.—*State v. Tate*, Mo., 18 S. W. Rep. 1088.

103. JUDGMENT—Affidavit of Defense—Sufficiency.—In an action on a judgment, defendant filed an affidavit in which it was alleged that, after the rendition of the judgment sued on, it was agreed between the parties that, if defendant should enter the service of plaintiffs, such entry should be payment in full of any claim they might have against him; that, in pursuance of such agreement, defendant did enter their service, and so continued until the employment was terminated, with plaintiff's consent: *Held*, that the affidavit presented a good defense to the judgment.—*Potter v. Hartnett*, Penn., 23 Atl. Rep. 1007.

104. JUDGMENT ON APPEAL BOND.—When a judgment has been affirmed by the supreme court on appeal, and an action on the appeal bond has been prosecuted to judgment, which latter judgment is appealed from, and so pending in the supreme court, *held*, that the original judgment is not merged in or extinguished by the judgment upon the appeal bond, so as to prevent execution upon the original judgment.—*Rockwell v. Dist. Ct. of Lake County*, Colo., 29 Pac. Rep. 454.

105. JUDGMENT—Collateral Attack.—Complaint against a tenant, for the possession of land, was made before a justice. Defendant filed his answer denying plaintiffs'

title, and claiming title in himself. The justice sustained a demurrer to the answer, and judgment for possession was given plaintiffs: *Held*, in an action against the justice and officers who executed the judgment, based on the want of jurisdiction in the justice to try title, that, as the justice had jurisdiction of the parties and the subject-matter up to the time the answer was filed, the judgment, though erroneous, could not be assailed collaterally.—*Alexander v. Gill*, Ind., 30 N. E. Rep. 525.

106. JUDGMENT—Execution.—An order of the probate court restating a guardian's account, and ordering him to pay to his successor the balance found due from him on such accounting, is not a judgment upon which execution can issue.—*Kingsbury v. Hutton*, Ill., 30 N. E. Rep. 600.

107. JUDGMENT BY DEFAULT.—Where a defendant applies, under section 77 of the Code, to have a judgment rendered upon service by publication opened up, and asks to be let in to defend, he must bring himself clearly within the provisions of the statute. If the answer filed fails to show a meritorious defense, it is not error for the court to overrule such application. — *Durham v. Moore*, Kan., 29 Pac. Rep. 472.

108. JUDGMENT LIENS.—Gen. St. § 3034, providing that the lien upon the lands of a judgment debtor created by filing a certificate of lien, as provided for in the three preceding sections, shall not be valid "as to any real estate which might not have been levied upon under an execution on the same judgment at the date of filing such lien," only limits the creation of liens by this method to lands which are subject to levy, and does not prevent them from attaching to such lands merely because a stay of execution has been granted. —*Hobbs v. Simmonds*, Conn., 23 Atl. Rep. 962.

109. JUDGMENT ON COGNOVIT. — A judgment entered upon a *cognovit* will not be opened because of a verbal promise, alleged to have been made at the time of giving the *cognovit*, that the judgment would never be enforced.—*Heckscher v. Middleton*, N. J., 23 Atl. Rep. 943.

110. JUDGMENT ON INJUNCTION BOND.—Jurisdiction to assess damages on an injunction bond against a public administrator and his sureties is not lost by the revocation of the letters of administration pending the motion to assess the same, and an order that the "cause now proceed in the name of" the substituted administrator.—*Nolan v. Jones*, Mo., 18 S. W. Rep. 1107.

111. JUDGMENT ROLL — Decision of Court.—Section 5066, Comp. Laws construed, and held to be mandatory, and not merely directory. It is the duty of the clerk of the district court, in cases tried by the court without a jury, to annex the decision of the trial court to the judgment roll; and where, in such case, no decision is found in the record transmitted to this court on appeal from a judgment, it will be presumed in the absence of any explanation, that no decision was made or filed in the court below.—*Garr, Scott & Co. v. Spalding*, N. Dak., 51 N. W. Rep. 867.

112. JUSTICE OF THE PEACE—Jurisdiction.—An action for unliquidated damages for breach of a contract is a matter of contract, within Const. 1874, art. 7, § 40, giving justices of the peace jurisdiction in "matters of contract," where the amount involved does not exceed $300.—*Koch v. Kimberling*, Ark., 18 S. W. Rep. 1040.

113. LANDLORD AND TENANT—Defective Machinery.—A person employed about a mill, which is being operated under a lease, is not entitled to recover of the lessor for injuries occasioned by defective machinery, unless he is able to show that at the time of the injury he was in the employ of the lessor, or that the lessor had agreed to keep the machinery in repair.—*Johnson v Tacoma Cedar Lumber Co.*, Wash., 29 Pac. Rep. 451.

114. LANDLORD AND TENANT — Tenancy from Year to Year. — In an action against a tenant for possession, there was no written lease, and the evidence showed a general tenancy and letting without any limitation of time, the rent payable monthly at a fixed rate per month: *Held*, that it was a tenancy from year to year, and could not be terminated by notice for a period less than three months.—*Elliott v. Stone City Bank*, Ind., 30 N. E. Rep. 537.

115. LEASES—Holding Over.— Where a tenant under a lease for two years, with a right of renewal for three, with a reservation of rent by the year, payable in monthly installments, holds over after the expiration of the five years, the tenancy will, in the absence of any different arrangement, be for another year, at the rent specified in the lease. — *Harvey v. Gunzberg*, Pa., 23 Atl. Rep. 1005.

116. LIMITATIONS — Payment by Agent.—When a person constitutes another person his agent, with authority to sell certain collaterals and apply the proceeds to the payment of a note, a payment made in pursuance of such authority must be regarded as voluntary, and sufficient, therefore, to take the case out of the statute of limitations.— *Nat. Bank of Boulder v. Rowland*, Colo., 29 Pac. Rep. 465.

117. MALICIOUS PROSECUTION — Evidence.—In an action for malicious prosecution the trial court properly excluded evidence of defendant's ill-will against persons other than plaintiff. — *Shanks v. Robinson*, Ind., 30 N. E. Rep. 516.

118. MANDAMUS — Judgment.— In an action on a joint and several note, where judgment was entered against one defendant on a *cognovit*, and afterwards, on a trial, judgment was entered in favor of the other defendant because of the bar of the former judgment against the co-defendant, *mandamus* does not, as a matter of right, lie on the trial court to set aside both judgments, though the entry of the second judgment was error.—*Beals v. Clinton Circuit Judge*, Mich., 51 N. W. Rep. 886.

119. MASTER AND SERVANT — Defective Machinery.—A complaint for injury to a servant while in the performance of his duty, through defect in the machinery provided by the master, need not state that such defect was known or ought to have been known by the master, want of knowledge being a matter of defense. —*Branch v. Port Royal & W. C. Ry. Co.*, S. Car., 14 S. E. Rep. 808.

120. MASTER AND SERVANT — Fellow-servants. — The foreman of a gang of men employed in repairing a railroad track is a co-employee of such men.—*Spancake v. Philadelphia & R. R. Co.*, Pa., 23 Atl. Rep. 1006.

121. MASTER AND SERVANT — Negligence.—It is part of the personal duty of the master to give direction to the work he undertakes, and to prescribe a system for conducting it. This may be done by rules, when necessary, or by the personal guidence of managers and foreman. In so doing the master must use ordinary care for the safety of his employees. — *Schroeder v. Chicago & A. Ry. Co.*, Mo., 18 S. W. Rep. 1094.

122. MECHANICS' LIENS— Affidavit of Defense.—Where an affidavit of defense was filed to an action by a subcontractor upon a mechanics' lien, judgment cannot be entered for plaintiff in disregard of such affidavit on the ground that it was improperly filed, without first testing the regularity of the affidavit by an appropriate motion to remove it from the file —*Wilkinson v. Brice*, Pa., 23 Atl. Rep. 982.

123. MECHANIC'S LIEN — Construction of Railroad.—Elliott, Supp. § 1710, provides that all persons who shall perform work or labor in the construction of a line of railroad, whether for the company owning such railroad or for a contractor thereof, shall have a lien upon the right of way and franchises of such railroad: *Held*, in an action by a laborer to enforce his statutory lien, that defendant railroad is not exonerated by showing that the labor was performed for a contractor, who was paid in full therefor by defendant.—*Indiana, I. & I. R. Co. v. Larrew*, Ind., 30 N. E. Rep. 517.

124. MECHANIC'S LIEN—Contract.—The fact that a contractor has agreed to take his pay in property does not deprive him of the right to a lien.—*Pierce v. Marple*, Pa., 23 Atl. Rep. 1008.

125. MECHANIC'S LIEN—Eletcric Light Poles.—An electric light and power company owned land, on which was a building and machinery for generating electricity,

and it had a franchise from a city to use its streets for the erection of poles on which to stretch wires and suspend lamps to furnish light for the people of the city. Poles were purchased from plaintiff, planted in the streets of the city, wires and lamps were placed thereon, and all connected by the electric light wires with the machinery and premises of the company: *Held*, that the poles and wires were an appurtenance of the premises of the company, and that the plaintiff was entitled to a lien upon the same for the poles furnished. — *Badger Lumber Co. v. Marion Water Supply, Electric Light & Power Co.*, Kan., 29 Pac. Rep. 476.

126. MECHANIC'S LIENS—Forreclosure. — In an action to forclosure a mechanic's lien, the other lienors and the assignee of the contractor were made parties defendant with the owner, who had broken his building contract by refusing to pay the second installment therein at the stage of the work agreed upon: *Held*, that the owner was liable for the full amount unpaid on such installment, regardless of what it cost him to complete the building. — *Thomas v. Stewart*, N. Y., 30 N. E. Rep. 577.

127. MECHANIC'S LIENS — Procedure.—In an action to foreclose a mechanic's lien the court can submit an issue as to the amount due to a jury for determination, regardless of Mills' Ann. St. § 2891, providing that the court may proceed to hear and determine liens and claims, or may refer the same to a referee to ascertain and report on said liens and claims, and the sum due thereon.—*Bradbury v. Butler*, Colo., 29 Pac. Rep. 463.

128. MECHANIC'S LIENS — Verification.— The verification of the lien before a notary public who is an attorney, and who has been consulted by the claimant prior to the verification in regard to the matters in dispute between him and the owner, when there is no action or proceeding begun or pending between the parties, will not invalidate the lien.— *Carr v. Hooper*, Kan., 29 Pac. Rep. 398.

129. MORTGAGES — Accretions. — H purchased a track of land known as the "John Green Farm," situated on the Ohio river which was described in his deeds by metes and bounds. The river call in his deeds was from a certain stake on the river; "thence up the river as it meanders, south," a certain distance. Afterwards H gave mortgages describing the land as the "John Green farm purchased by H," without the particular description given in his deeds: *Held*, that the mortgages covered the land acquired by accretion from the river after the mortgages were given.—*Cruikshanks v. Wilmer*, Ky., 18 S. W. Rep. 1018.

130. MORTGAGES — Foreclosure.— In an action to foreclose a purchase money mortgage, brought against the mortgagor and one B, who purchased from him after the mortgage was given, it was not error to refuse a deficiency judgment against B on the ground that he assumed the mortgage debt, where, in his answer and testimony, he denied that he assumed the debt, and the only evidence to the contrary was the testimony of the mortgagor that in purchasing the land and executing the mortgage he was acting as agent for B, and with the purpose of conveying to him, as he afterwards did; that he had purchased other land for him in the same way, and he had always assumed the mortgages thereon; and where it does not otherwise appear that the mortgagor acted in this particular transaction as agent for B. — *Thomson v. Bettens*, Cal., 29 Pac. Rep. 336.

131. MORTGAGE—Foreclosure—Appraisement.—An appraisement of real estate proposed to be sold under the provisions of section 453 of the Civil Code must be made upon actual view had subsequent to the time the appraisers are called and sworn, and an appraisement made based only on a view had before the appraisers have been duly qualified is insufficient.—*Alfred v. Bank of Hazelton*, Kan., 29 Pac. Rep. 471.

132. MORTGAGE — Merger. — Where the amount of incumbrances considerably exceeds the value of the property, an intermediate lienholder, who purchases the equity of redemption, may, as against junior lienholders, protect his title by acquiring outstanding senior incumbrances, and causing sales to be made thereunder; and equity, if necessary, will prevent the title which he acquires by purchase under such sales from merging in the title acquired by the purchase of the equity of redemption.—*Myers v. O'Neal*, Ind., 30 N. E. Rep. 510.

133. MORTGAGE FORECLOSURE—Defenses.—It is no defense to a suit to foreclose a purchase-money mortgage that when the purchase was made defendant "supposed he was getting a fee-simple title, but is now informed that he bought only a life estate, and that certain remainder-men have an interest therein," where defendant's possession is yet undisturbed, and there were no allegations of fraud.—*Monro v. Long*, S. Car., 14 S. E. Rep. 824.

134. MUNICIPAL CORPORATION—Board of Health—Nuisance.—Where a court of law is asked to annul the otherwise lawful action of a municipal body upon the ground that a nuisance is thereby created, a mere apprehension by prosecutors of such a result injurious to their property will not entitle them to any remedy. —*State v. Board of Health of City of Newark*, N. J., 23 Atl. Rep. 949.

135. MUNICIPAL CORPORATIONS — Contracts.— A contract with a city for grading a street, which provides that the grade shall be brought to a certain height, and that the work shall be done under the supervision of the city engineer, does not confer upon the engineer authority to change the grade, or modify in any essential particular the provisions of the contract unless expressly authorized by the council.—*Murphy v. City of Albina*, Oreg., 29 Pac. Rep. 353.

136. MUNICIPAL CORPORATIONS—Dismissal of Firemen. —Where a fireman, who has been dismissed on a charge of disrespect to one of the fire commissioners, sues the commissioners, alleging that his dismissal was in willful violation of their duties, under an ordinance allowing the dismissal of employees for inefficiency, evidence as to plaintiff's conduct on previous occasions, or as to his efficiency and general reputation, has no bearing on the question of his guilt or innocence on the occasion mentioned in the charge, nor upon the fairness of the commissioners' judgment, and is irrelevant.—*O'Neill v. Register*, Md., 23 Atl. Rep. 960.

137. MUNICIPAL CORPORATIONS — Improvements.—The provision of a city charter, making proceedings which relate to an assessment for improvements binding upon those who petition for the improvement, and who, although given an opportunity to appear and object to the proceedings or assessment, fail to do so, does not estop them from afterwards objecting to such an assessment when the methods by which the assessment was reached were such as to render it unequal and unconstitutional, but only when the proper methods were employed.—*Howell v. City of Tacoma*, Wash., 29 Pac. Rep. 447.

138. MUNICIPAL CORPORATIONS—Improvements—Warrants.—Where a city of the first class contracts for curbing and guttering a street, and issues its warrants to the contractor in payment therefor, the city is primarily liable to the contractor on said warrants, and, to reimburse itself, must levy and collect an assessment against the property liable therefor.—*City of Atchison v. Leu*, Kan., 29 Pac. Rep. 467.

139. MUNICIPAL CORPORATIONS—Ordinances.—It is in the police power of a city to adopt an ordinance regulating the speed of railroad trains within the city limits, and such an ordinance should not be construed to apply only to streets and crossings, as the power to adopt such ordinance is not implied from the power of the city to regulate streets.—*Bluedorn v. Missouri Pac. Ry. Co.*, Mo., 18 S. W. Rep. 1103.

140. MUNICIPAL CORPORATION — Regulation of Street-cars.—Under a city charter giving the council power to pass all ordinances necessary for the due administration of justice and the better government thereof, and to "cause the removal or abatement of any nuisance," the passage of an ordinance requiring a street-car company to put "a driver and a conductor" on each

car is a proper exercise of the city's police power, and not an impairment of the company's rights, not being unreasonable or oppressive.—*South Covington & C. St. Ry. Co. v. Berry*, Ky., 18 S. W. Rep. 1026.

141. MUNICIPAL CORPORATION—Tort of Tax Collector.—A city is not liable for the act of a tax collector in bringing a malicious suit against a person, unless the suit is authorized or ratified by it.—*Horton v. Newell*, R. I., 23 Atl. Rep. 910.

142. MUTUAL BENEFIT ASSOCIATIONS—Dissolution.—It is not ground for the dissolution of a mutual benefit association that its members, in violation of its by-laws, deposed its president, without preferring written charges against him, where he put the motion to oust himself to vote, and, upon declaring the result, retired from the chair, and participated in subsequent meetings without asserting his right to preside, as he thereby acquiesced in his removal, and will be presumed to have resigned in the interest of harmony.—*Industrial Trust Co. v. Greene*, R. I., 23 Atl. Rep. 914.

143. MUTUAL BENEFIT INSURANCE—Assessment.—The rules of a mutual benefit association required the supreme secretary, when the benefit fund was insufficient, to notify the subordinate secretaries to collect a fixed assessment: *Held*, in an action on a certificate of insurance issued by such association, that the notice from the supreme secretary was presumptive proof that the assessment was necessary, since acts done by a corporation, which presuppose the existence of other acts to make them legally operative, are presumptive proof of the latter.—*Demings v. Supreme Lodge Knights of Pythias of the World*, N. Y., 30 N. E. Rep. 572.

144. MUTUAL BENEFIT INSURANCE—Forfeiture.—Where a member of a mutual insurance company is suspended for non-payment of assessments, and neglects during his life-time to secure his reinstatement in accordance with the terms of his benefit certificate and the provisions of the order, his restoration to membership cannot be effected after his death by payment of the sum due from him to the company at the time of his death, though the period within which, if alive, he could have secured his reinstatement, has not yet expired.—*Modern Woodman of America v. Jameson*, Kan., 29 Pac. Rep. 433.

145. NEGLIGENCE—Evidence.—Plaintiff's intestate was killed by being run over by cars standing upon a side track which he was attempting to cross, the cars being moved by another car being pushed against them. He went upon the siding without stopping, looking, or listening, although he knew that the siding was across his path, that two cars were upon it, and that they were to be moved at some time during that day: *Held*, that he was guilty of contributory negligence.—*Ash v. Wilmington & N. R. Co.*, Penn., 23 Atl. Rep. 898.

146. NEGOTIABLE INSTRUMENTS—Bona Fide Holder.—Defendant indorsed a note for the accommodation of M, who transferred it to plaintiff, a bank in New York city, as additional security for a precedent debt: *Held*, that plaintiff was not a *bona fide* holder for value, and that the note was open to the defense that M agreed not to negotiate it elsewhere than in Louisville, Ky.—*United States Nat. Bank v. Ewing*, N. Y., 30 N. E. Rep. 501.

147. NEGOTIABLE INSTRUMENT—Fraudulent Consideration.—In an action on a note against the maker by the administrator of the payee it is no defense that the note was given in consideration of a judgment in defendant's favor, which decedent confessed for the purpose of covering up his property to defraud his creditors.—*Harbaugh v. Butner*, Penn., 23 Atl. Rep. 983.

148. NEGOTIABLE INSTRUMENT—Guarantor of Note.—A person who indorses his name on the back of a non-negotiable note, to give it credit, is, under Civil Code, §§ 2787, 2807, 2823, a guarantor, and liable, on default of the principal, without any previous demand or notice.—*First Nat. Bank of San Diego v. Babcock*, Cal., 29 Pac. Rep. 415.

149. NEGOTIABLE INSTRUMENT — Judgment.—Where the holder of a note sues the assignor thereof, and alleges the statutory grounds of the insolvency of the maker and the responsibility for the delay in bringing suit on the assignor, and there is no evidence that the maker was insolvent or that the delay was occasioned by the assignor, a judgment for plaintiff cannot be sustained.—*Chicago Inv. Co. v. Harrison*, Colo., 29 Pac. Rep. 462.

150. NEGOTIABLE INSTRUMENT — Promissory Note.—A testatrix executed and delivered to plaintiff the following writing: "One year after my death I hereby direct my executors to pay J, [plaintiff], his heirs, executors, or assigns, the sum of $1,976.90, being the balance due him for cash advanced at various times by him to H, my son, and others, as per statement rendered by him this day, without interest:" *Held*, that such writing was a promissory note, and not a testamentary paper.—*Hegeman v. Moon*, N. Y., 30 N. E. Rep. 487.

151. NEGOTIABLE INSTRUMENT—Waiver of Demand.—A jury is authorized to infer from the fact that indorsers of a negotiable promissory note informed the indorsee, at the time of the transfer of the note to the indorsee, that they had extended the time of payment by agreement with the makers, and requested the indorsee not to present it for payment for 30 days, the indorsee consenting thereto, that the indorsers had waived demand, protest, and notice of non-payment of said note.—*Glaze v. Ferguson*, Kan., 29 Pac. Rep. 396.

152. PARENT AND CHILD—Homes for Dependent Children.—When a child, at the instance of its mother, has been committed to one of the "homes for dependent and neglected children," under Gen. St. ch. 228, and afterwards placed by the board of managers in a private family, where it is kindly treated, the mere fact that the mother subsequently becomes able to insure it a suitable support and education does not entitle her to assume custody and control over it; and the refusal of the board to surrender it upon demand is not an abuse of discretion.—*Whalen v. Olmstead*, Conn., 23 Atl. Rep. 964.

153. PARTITION.—In a suit for partition, under Pub. Gen. Laws, art. 16, § 116, of land derived under a will, the right, under article 46, of the eldest heir of an intestate's estate to elect to take the property at the appraised value, and pay other heirs their proportionate shares, does not exist, though the commissioners appointed to make the division reported the property indivisible.—*Johnson v. Hoover*, Md., 23 Atl. Rep. 903.

154. PARTNERSHIP—Action—Assumpsit.—Unless there has been a settlement of partnership accounts and a balance struck, *assumpsit* cannot be maintained by one partner against another concerning matters arising out of the partnership, the proper action being account.—*Elmer v. Hall*, Penn., 23 Atl. Rep. 971.

155. PARTNERSHIP — Retiring Member.—Where an agreement for the dissolution of a partnership provided that one member should take the stock, collect the debts due the firm, and on final settlement pay the other member his full share of the firm assets, the retiring member cannot recover his share of the firm assets, unless he shows that the creditors of the firm have been paid in full.—*Powell v. Bennett*, Ind., 30 N. E. Rep. 518.

156. PARTNERSHIP—Verbal Partition of Land.—A verbal division of partnership land is void, and a partner who takes possession of land under such a division is not estopped from subsequently repudiating the same.—*Duncan v. Duncan*, Ky., 18 S. W. Rep. 1022.

157. PATENTS FOR INVENTIONS—Prior Use.—The two years' prior public use and sale, which, under Rev. St. U. S. § 4886, precludes the issuance of a patent, is a public use and sale within the United States, and such use and sale in a foreign country do not affect the inventor's right.—*Gandy v. Main Belting Co.*, U. S. S. C., 12 S. C. Rep. 598.

158. PRINCIPAL AND AGENT—Assignment of Negotiable Bond.—If a broker or other agent transfer paper by delivery without disclosing who is his principal, he is himself to be regarded as a principal in the transaction, and the party responsible to refund money paid for

bonds which were valueless.—*Pugh v. Moore*, La., 10 South. Rep. 710.

159. PRINCIPAL AND AGENT—Liabilities of Agent.—In an action against a mining company and its superintendent for services rendered as a teamster, it was error to render judgment against the superintendent individually, where the evidence showed that plaintiff was employed by a foreman of the company to work about the mine; that thereafter the superintendent directed him to drive a team used in hauling wood and ore for the company; and that the foreman was instructed to and did keep the time of plaintiff's service, the same as that of any other employee of the company. —*Holmes v. Griffith*, Colo., 29 Pac. Rep. 382.

160. PRINCIPAL AND AGENT—Powers of Agent.—In an action to recover money loaned to defendant's agent, where defendant denied the agent's authority, there was no error in instructing the jury that "the facts that the agent had the management of defendant's store, kept the accounts thereof, was authorized to draw checks on the bank for the price of goods and expenses of the store, to make overdrafts on that bank, and that defendant sanctioned his mode of dealing with the bank so far as he was apprised of it, were insufficient to prove that the agent had power to borrow money generally or of plaintiff."—*Heath v. Paul*, Wis., 51 N. W. Rep. 876.

161. QUIETING TITLE—Res Judicata.—A defendant in a foreclosure suit, who after summons, but before decree, purchases the property for others at a tax sale, and by agreement takes the certificate in his own name, must make disclosure thereof, or the decree will be conclusive as to his title and as to that of his principals, to whom he afterwards assigns the certificate; and the latter will be prevented from setting up the tax deed in a subsequent action to quiet title brought by the assignee of the purchaser at foreclosure sale.—*Davis v. Barton*, Ind., 30 N. E. Rep. 512.

162. RAILROAD COMPANIES.—A railroad company, which has constructed its road within the period limited by law, may subsequently construct, from time to time, such switchings or sidings as may become necessary for the handling of its business and the operation of its road.—*Borough of Pottsville v. People's Ry. Co.*, Pa., 23 Atl. Rep. 900.

163. RAILROAD COMPANIES—Injuries—Negligence.—In an action against a railroad for personal injuries it appeared that plaintiff attempted in daylight to cross the tracks at a station in front of an approaching train, which she saw, and which was so near to her that, when she stumbled and fell on the track, the engine struck her before she could recover herself; that it was due to her failure to make inquiry that she attempted to cross the tracks at all; and that defendant held out no invitation for her to cross the tracks: *Held*, that she was not entitled to recover.—*Young v. Old Colony R. Co.*, Mass., 30 N. E. Rep. 560.

164. RAILROAD COMPANIES—Street Railways — Negligence.—In an action for injuries caused by the collision of a cable car with plaintiff's wagon, the court properly refused to charge that, if plaintiff was guilty "of any negligence whatever, or concurred with the negligence of defendant, if any," in causing the accident, then the verdict must be for defendant, as requiring too great a degree of care of plaintiff.—*Spurrier v. Front St. Cable Ry. Co.*, Wash., 29 Pac. Rep. 346.

165. RAILROAD MORTGAGE—After-acquired Property. —A railroad company executed a mortgage on its entire line of road between designated points, "as said railroad now is or may be hereafter constructed, maintained, operated, or acquired, together with all the privileges rights, franchises, real estate, right of way, depots, depot grounds, side tracks, water tanks, engines, cars, and other appurtenances thereto belonging:" *Held*, that the mortgage covered land subsequently purchased by the railroad company near a depot on the line of road mortgaged, and an hotel erected thereon for the purpose of an eating-house and to accommodate the employees of the company, passengers, and other persons.—*Omaha & St. L. Ry. Co. v. Wabash, St. L. & P. Ry. Co.*, Mo., 18 S. W. Rep. 1102.

166. RAILROADS — Elevated Railroads—Damages.—In an action for damages to plaintiff's premises by an elevated railroad in the avenue abutting such premises, the court properly refused to find that "there has been a general rise in the value of real estate situated on the avenue, and this increase is largely attributable to the existence and operation of defendants' railroad," as such facts were immaterial where there was sufficient evidence in the case to warrant a finding that plaintiff had been damaged in his property rights by the construction, maintenance, and operation of such railroad. —*Storck v. Metropolitan El. Ry. Co.*, N. Y., 30 N. E. Rep. 497.

167. RAILROADS—Laborers' Claims.—How. St. § 3423, provides that it shall be the duty of railroad companies, where labor or materials are furnished to a contractor for repairing or constructing a road, to see that such laborers or material-men are paid before payment is made to the contractor, providing notice is given the company, with a "bill of items" of the material and labor furnished to the contractor, stating the amount claimed, and when the "claim shall be due" *Held* that, where a notice was given which claimed a certain amount "as a balance due for work" for a certain month, without specifying the kind of labor performed, the date of performance, the rate per day, or how much had been paid, the notice was insufficient.—*Quackenbush v. Chicago & W. M. Ry. Co.*, Mich., 51 N. W. Rep. 883.

168. RAILROADS — Street Railways — Negligence. — Where a petition charged negligence of the driver of a street car in prematurely starting it while plaintiff was alighting, and the evidence supported the charge, the fact that a defective brake contributed to the injury will not defeat a recovery, and constitutes no variance. —*Buck v. People's Street Railway & Electric Light & Power Co.*, Mo., 18 S. W. Rep. 1090.

169. RAILWAY COMPANIES—Injuries to Children.—Estoppel.—Where a father, as the next friend of his infant son, took part in an action against a railroad company for injuries alleged to have been caused by the company's negligence, and insisted on a recovery by his son for the loss of the son's services, the father is estopped to institute a subsequent action in his own name to recover the value of such services.—*Baker v. Flint & P. M. R. Co.*, Mich., 51 N. W. Rep. 897.

170. REAL ESTATE AGENTS — Commissions.—Defendant placed his property for sale or exchange in the hands of plaintiff, a real estate agent, who introduced him to E, who introduced him to R, who worked up a trade with S, which subsequently fell through. About ten days later, defendant, on his own account, heard of a trade that he could likely make with C, and, meeting R, told him of it, and asked him to see C, which he did, and succeeded in making a trade; defendant agreeing to pay R certain commission therefor: *Held*, that plaintiffs were not entitled to any commissions for the trade.—*Wilson v. Alexander*, Tex., 18 S. W. Rep. 1057.

171. REAL ESTATE AGENTS — Commission.—Where a broker is employed to sell real estate on commission, the exclusive right to sell not being given, the owner himself has the right to make a sale independent of the broker, and in such case the owner will not be liable to the brokers for commisions, though he produces a purchaser after sale by the owner.—*Hill v. Jebb*, Ark., 18 S. W. Rep. 1047.

172. REAL ESTATE AGENTS—Commissions—Evidence. —In an action for a balance claimed to be due for selling a large tract of land for defendant, where the issue is whether defendant agreed to pay plaintiff the sum of 25 cents per acre and a commission of 5 per cent. on the balance, the testimony of a real estate agent is competent to show that the compensation claimed by plaintiff is reasonable and not unusual.—*Greer v. Laws*, Ark., 18 S. W. Rep. 1038.

173. RECEIVER—Appointment.—Where the claims on which a petitioner asks for a receiver are open book-accounts, small in comparison to the property sought to be sequestered, and unascertained, and which defendants offer to secure by sufficient bond in case such claims are subsequently established, a receiver should not be appointed.—*Virginia, T. & C. Steel & Iron Co. v. Wilder*, Va., 14 S. E. Rep. 806.

174. RECEIVERS — Attachment.—On a general assignment, where the assignee refuses to qualify, and the circuit court, in chancery, appoints a receiver, who takes possession of the property, a justice of the peace cannot issue an attachment and levy on the funds in the hands of a receiver, and, on appeal from such justice, the circuit court acquires no jurisdiction.—*Walker v. Geo. Taylor Commission Co.*, Ark., 18 S. W. Rep. 1056.

175. RECEIVERS—Insolvency.—Mere proof of insolvency will not, in all cases, and under all circumstances, make it the duty of the court to appoint a receiver. It must, in addition, be made to appear, according to the requirement of the statute, that the corporation will not be able in a short time to resume its business with safety to the public and advantage to its stockholders. —*Atlantic Trust Co. v. Consolidated Electric Storage Co.*, N. J., 23 Atl. Rep. 934.

176. RECEIVERS—State and Federal Courts.—Comity does not require that a federal court shall refuse to appoint a receiver for a railroad because of the pendency of a prior foreclosure suit in the State court, when such suit is admittedly an amicable proceeding, intended as a means of nursing the property into success, and it appears that there is no immediate purpose of procuring the appointment of a receiver therein.—*East Tennessee, V. & G. R. Co. v. Atlanta & F. R. Co.*, U. S. C. C. (Ga.), 49 Fed. Rep. 608.

177. REMOVAL OF CAUSES—Aliens.—Act Cong. Aug. 13, 1888, authorizing the removal of causes to the Circuit Court of the United States on the ground of local prejudice, makes no provision for a removal by an alien.—*New Orleans, Ft. J. & G. I. R. Co. v. Rabasse*, La., 10 South. Rep. 708.

178. REPLEVIN — Claim and Delivery.—An action of claim and delivery maintained, under Code Civil Proc. § 509, against a constable "to recover possession of personal property," which has been wrongfully attached, unless brought before the property has been sold, and while it is still in defendant's possession.—*Riciotto v. Clement*, Cal., 29 Pac. Rep. 414.

179. REPLEVIN — Demand. — The fact that property seized on attachment was found in actual custody of the person named in the writ does not make it necessary that another person, who owned it at the time it was taken, should make a demand on the officer before bringing replevin against him, since if he then owned the property, the taking was unlawful as against him. —*Hopkins v. Bishop*, Mich., 51 N. W. Rep. 902.

180. REPLEVIN OF ATTACHED GOODS.— Where a desk was sold by plaintiffs, the title to remain in them until the whole purchase price was paid, and a creditor of the purchaser attached the desk before fully paid for, and the desk was delivered by the constable to a public warehouseman, who receipted therefor, plaintiffs may replevy the desk.—*Robinson v. Besarick*, Mass., 30 N. E. Rep. 553.

181. RES JUDICATA.— In an action to foreclose a mortgage, a subsequent mortgagee was made a party defendant, and answered, praying that the surplus, if any should remain after paying the prior mortgage, should be applied to the payment of the subsequent mortgage: *Held*, that the judgment in such action was not a bar to an action to foreclose the subsequent mortgage which covered two distinct tracts of land, one of which was not involved in the previous action.—*Brill v. Shively*, Cal., 29 Pac. Rep. 324.

182. SALE OF LAND—Condition Subsequent.—The conveyance of an estate in fee, with the express condition that intoxicating liquor should not be there sold as a beverage, etc., construed as on its face a condition subsequent.— *Sioux City & St. P. R. Co. v. Singer*, Minn., 51 N. W. Rep. 905.

183. SALE UNDER TRUST DEED.—Where land on which a deed of trust was given to secure a note for its purchase price is sold under the trust deed, without the consent of the owner of the note, the sale is void.—*Magee v. Burch*, Mo., 18 S. W. Rep. 1078.

184. SCHOOL-DISTRICTS— Distribution of Assets.—Under the provision of Laws 1885, ch. 334, § 2, making the "last prior assessment the basis in determining" what ratio is to be employed in the apportionment of the assets of a school-district on a division of the territory thereof, it is of no importance that the portion detached contain no school-house or inhabitants. — *Board of School Directors of Town of Eagle River v. School-district No. 1 of Town of Merrill*, Wis., 51 N. W. Rep. 874.

185. SCHOOL FUND—Distribution—Mandamus.—*Mandamus* will lie to compel the comptroller to distribute the money which the general assembly has granted to the several towns of the State in aid of common schools, and which section 2228 orders him to distribute.—*State v. Staub*, Conn., 23 Atl. Rep. 924.

186. SET-OFF.— Where defendant in attachment proceeding filed a cross-complaint, demanding damages for wrongful attachment, and the jury found for plaintiff in a certain sum, and awarded damages to defendant, the damages awarded defendant should be set off against the amount found to be due plaintiff, though defendant had agreed that the amount so recovered should be paid to his attorney as fees.—*Popplewell v. Hill*, Ark., 18 S. W. Rep. 1054.

187. SHERIFFS— Compensation.— Under Laws 1881, ch. 53 which provides that the county supervisors may fix the salary of the sheriff, and when so fixed it shall be in lieu of all fees and compensation for the sheriff, under-sheriff, and deputy sheriff, for all services rendered by such officers within the limits of the county, for which service the county is liable, the fact that the county has collected fees for services of such officers in attendance on cases which came into the county on changes of venue from other counties does not entitle the sheriff to such fees.—*Cutts v. Rock County*, Wis., 51 N. W. Rep. 881.

188. SPECIFIC PERFORMANCE.— A contract for the sale of land, entered into under the belief by both parties that the vendor has title, when in fact he has none, will not be specifically enforced in equity.— *Hatch v. Kizer*, Ill., 30 N. E. Rep. 605.

189. SPECIFIC PERFORMANCE — Decree.— In a suit for the specific performance of a contract, a decree that gives the complainant the relief prayed for on his paying less than the amount admitted by the bill to be due is erroneous. — *Russell v. Connors*, Ill., 30 N. E. Rep. 606.

190. STATUTES—Legislative Journals.— Const. art. 5, § 19 provides that no act shall take effect until 90 days after its passage (except in cases of emergency, which shall be "expressed in the act"), unless the assembly shall, by a two-thirds vote, otherwise direct: *Held*, that a bill lacking an emergency clause, when signed by the executive and presiding officers of the two houses does not take effect until 90 days later, though the journals of the houses showed that it contained such clause when the final votes were taken. —*In re General Appropriation Bill*, Colo., 29 Pac. Rep. 379.

191. SUNDAY LAWS — Athletic Sports.— Rev. St. § 3854, provides that any person convicted of "horse racing, cock-fighting, or playing at cards or games of any kind," on Sunday, shall be guilty of a misdemeanor: *Held*, that this provision does not extend to mere "athletic sports;" the words, "or games of any kind," falling under the rule which prescribes that, where general words follow particular ones, they are to be construed as applicable to things or persons of a like nature.—*St. Louis Agricultural & Mechanical Ass'n v. Delano*, Mo., 18 S. W. Rep. 1101.

192. SUPREME COURT — Jurisdiction.— Under Act Feb. 28, 1891, § 1, where, on an appeal to the appellate court,

the validity of a statute of the State or the United States is questioned, the cause will be transmitted to the supreme court.— *Benson v. Christian*, Ind., 30 N. E. Rep. 625.

193. SUPREME COURT COMMISSION—Constitutionality.—The constitutionality of the late supreme court commission will not be considered in a private controversy which was not referred to the commission for examination, and where the cause, in which the judgment sought to be impeached was rendered, has according to the records of the supreme court, and in conformity with its procedure, passed to the jurisdiction of the trial court; such judgment being only indirectly drawn in question through suit upon the appeal-bond given in connection with the former review thereof.—*Butler v. Rockwell*, Colo., 29 Pac. Rep. 458.

194. TAXATION—Collection of Taxes.— Under Rev. St. 1879, § 6893, a county court has no authority either to employ an attorney to assist in the prosecution of a suit for taxes or to charge the county with liability for his compensation. — *Butler v. Sullivan County*, Mo., 18 S. W. Rep. 1142.

195. TAXATION—Delinquent Taxes.—Act March 9, 1891, providing for the assessment and collection of taxes, is prospective only in its operation; and section 94 providing for a fee of 25 cents for the registration of an assessment on which taxes remain unpaid, does not relate to delinquent taxes for the year 1890.—*Fowler v. Fairchild*, Wash., 29 Pac. Rep. 351.

196. TAXATION—Situs of Property.—Under Gen. St. §§ 1082-1084, providing that, with certain exceptions, the assessor, without regard to the owner's residence, is to ascertain and assess all the property in his county subject to taxation, cattle which were born, bred, branded, and kept in Nye county have their *habitat* and are assessable there, though portions of them would from time to time wander into other counties, and though the owner's home ranch was in Eureka county, where some of the cattle were now and then taken to be fattened. — *State v. Shaw*, Nev., 29 Pac. Rep. 321.

197. TAXATION — Street-car Companies.— A street car stable, with the land on which it stands, together with the horses and vehicles therein, are not taxable for county purposes, where they are all owned by a street-railroad company, are used only in and about the business of carrying passengers and produce, according to the company's corporate powers, and are appurtenant, necessary, and indispensable therefor. — *Northampton County v. Easton, S. E. & W. E. P. Ry. Co.*, Pa., 23 Atl. Rep. 895.

198. TAX-SALES— Purchase by County Treasurer.— A purchase, either directly or indirectly, by a county treasurer, at his own sale, is invalid. The money paid into the county treasury on such purchase is forfeited to the public, and cannot be recovered back by the treasurer from the county, nor from the owner of the land, either in law, or in equity.—*Sponable v. Woodhouse*, Kan., 29 Pac. Rep. 394.

199. TAX TITLES.— Although a tax-deed was void because it showed on its face that the sale was made on a day not authorized by law, wherefore it cast no cloud on the title, yet, where another tax-deed for another tract of land involved in the same action appeared valid on its face, a refusal to dismiss the action, and to render judgment against the holder of the tax-deed for costs was not error.—*Allen v. Ozark Land Co.*, Ark., 18 S. W. Rep. 1042.

200. TENANTS IN COMMON.— One co-tenant is not responsible to his co-tenant for the cost of improvements put upon the common property, unless he so agreed, or afterwards ratified the act of making them. —*Welland v. Williams*, Nev., 29 Pac. Rep. 403.

201. TOWNSHIP — Paupers — Removal.— An order for the removal of a pauper from one township to another, providing only for her removal, but containing nothing to prevent her husband from accompanying her, cannot be said to violate the statute forbidding the separation of a wife from her husband.— *Overseers of Poor of Cascade Tp. v. Overseers of Poor of Lewis Tp.*, Pa., 23 Atl. Rep. 1003.

202. TRESPASS—Defenses.—Defendant entered plaintiffs's house, causing him to flee therefrom, whereupon defendant carried away plaintiff's household goods and provisions: *Held*, in an action of trespass *de bonis asportatis*, that a defense that defendant acted under the direction of plaintiff's wife, and did not convert the goods to his own use, was of no avail, the act of removal being a tort.—*Burns v. Kirkpatrick*, Mich., 51 N. W. Rep. 893.

203. TRIAL — False Witness — Confession — Recall.— Although a witness in her direct examination may deny all knowledge of any fact or circumstance which tends to prove the particular allegation on which the defense rests, yet, if she afterwards confesses that she testified falsely, or suppressed the truth, and signifies her willingness to make reparation, the party examining her will, upon motion, be permitted to recall her for the purpose of further examination.—*Rice v. Rice*, N. J., 23 Atl. Rep. 946.

204. TRUST — Evidence.—A resulting trust will not be declared in favor of one who paid no part of the purchase money, and whose claim of joint purchase on money advanced by defendant as an alleged loan to him rests upon his own testimony, which is denied by defendant, and the statements of a witness as to an admission alleged to have been made three years before by the defendant.—*Towle v. Wadsworth*, Ill., 30 N. E. Rep. 602.

205. TRUST AND TRUSTEE—Trust Property—Funds.—A trustee is only prohibited from dealing with the trust property for his own benefit while the trust continues. When his duty towards the property ceases, he occupies the same relation to it as does a stranger to the trust, and, acting throughout in good faith, may become the owner of the property, by purchase or otherwise.—*In re Shotwell*, Minn., 51 N. W. Rep. 909.

206. UNITED STATES SUPREME COURT—Federal Question.—A decision by a State court that an attorney, who has received money for his client under an award against the United States, is estopped from denying his client's title thereto, or from setting up as against him the fact that the award has been vacated, and that the matter is pending in the court of claims, involves no federal question, and is not reviewable in the supreme court.—*Sherman v. Grinnell*, U. S. S. C., 12 S. C. Rep. 574.

207. USURY.—Where a usurious note, secured by mortgage, is, at the request of the principal, paid by the surety by the giving of his own note, which he afterwards pays, the surety cannot, in an action to foreclose the mortgage, be made responsible by junior mortgagees for the amount of the usury.—*Ford v. Grinter's Ex'rs*, Ky., 18 S. W. Rep. 1034.

208. VENDOR AND VENDEE—Bona Fide Purchaser.—A vendee of two adjoining lots, under an unrecorded contract, leased them to a person who lived on a lot adjoining the two, and whose barn extended partly upon one of said two lots: *Held*, that the tenant's possession of the two lots, by means of his barn and his taking timber and grass from the lots, was sufficient to put a subsequent purchaser on inquiry as to the vendee's rights.—*Mallette v. Kaehler*, Ill., 30 N. E. Rep. 549.

209. VENDOR AND VENDEE—Equity.—Plaintiff agreed in writing to convey certain land to defendant on the performance of an agreement by defendant that he would erect and maintain thereon certain improvements during a specified time and under specified conditions. Defendant failed to perform the agreements, and plaintiff filed its complaint, praying that the agreement be declared void for non performance, a foreclosure of defendant's interest in the land, and for possession: *Held*, that the action was one for the foreclosure of the land contract, of which equity had jurisdiction.—*Superior Consolidated Land Co. v. Nichols*, Wis., 51 N. W. Rep. 878.

210. VENDOR AND VENDEE — Fraud.—Where, during negotiations for the sale of land, defendant, the owner, assures plaintiff that the title is good, and conceals from her the report that his grantor was insane at the time he parted with the land, and plaintiff on his representations purchases the land, which is afterwards recovered from her by the guardian of defendant's grantor who has been adjudged insane, such representations and concealment are fraudulent.—*Burns v. Dockray*, Mass., 30 N. E. Rep. 551.

211. VENDOR AND VENDEE—Mortgage.—The purchaser can compel the vendor to comply with his obligation expressed in the act of sale to cancel the mortgage appearing of record against the property he sells.—*Klotz v. Macready*, La., 10 South. Rep. 706.

212. VENDOR'S LIEN—Enforcement.—Plaintiff filed a bill to enforce a vendor's lien for land conveyed by him by absolute deed as part consideration for an agreement by the vendee, which was never fulfilled. The remaining part of the consideration was never paid. No separate value was fixed upon the land by the parties, and there was no *data* from which its relative value could be specifically ascertained: *Held*, that the bill would not lie; the different considerations being so blended that they could not be separated.—*Bridgeport Land & Imp. Co. v. American Fire-Proof Steele Car Co. of Alabama*, Ala., 10 South. Rep. 704.

213. VENDOR'S LIEN—Waiver.—The execution of an absolute deed acknowledging the receipt of the purchase money of land and the taking of a mortgage, which, however, proves to be invalid on account of a defect in its execution, do not constitute a waiver of the vendor's lien as against creditors whose debts were existent at that time.—*Chapman v. Chapman*, Ark., 18 S W. Rep. 1037.

214. VILLAGES — Classification—Constitutional Law.—An act providing that, in any village in any county containing a city of the first grade of the first class, in which no sidewalks have already been constructed under the provisions of sections 2334*a*, 2334*b*, 2334*c*, Rev. St., the council of such village may construct sidewalks wherever such sidewalks have not been already laid, and assess the costs and expense of such sidewalk, upon the abutting lots and lands in the corporations according to the front foot of the property bounding and abutting upon the improvement, does not furnish a proper classification for the purpose of legislation of a general nature designed to have a uniform operation throughout the State.—*Costello v. Village of Wyoming*, Ohio, 30 N. E. Rep. 613.

215. WATERS — Injunction—Damage.—In a suit to restrain defendant from maintaining a dam on his premises, it appeared that the water in the pond must rise more than seven inches before it would set back on plaintiff's land; that in the ordinary flow of the stream the land would not be flooded; but that sudden and severe rains in the spring and fall or sudden melting of snow would cause the pond to fill, and the water to overflow on plaintiff's land: *Held* that, if defendant was liable for such overflows, still there was not evidence of irreparable damage.—*Smith v. King*, Conn., 23 Atl. Rep. 923.

216. WATERS—Irrigation—Mandamus.—Proceedings by *mandamus* to compel the delivery of water for irrigation are necessarily somewhat summary in their nature; to be effective, the relief must be immediate; and to this end trial courts should be liberal in matters of pleading and practice.—*Townsend v. Fulton Irrigating Ditch Co.*, Colo., 29 Pac. Rep. 453.

217. WATER AND WATER-COURSES — Judgment.—Where plaintiffs alleged that they were entitled to all the water of the stream, and defendants denied that they were entitled to any of it, and the court found that plaintiffs were entitled to a portion of the water only, and that, to make the water available for irrigating purposes, it was "necessary that the full flow of the stream be used at once," there was no error in the decree apportioning to plaintiffs the full flow of the water every three and one-half days out of seven, and to defendants such flow the other three and one half days.—*Harris v. Harrison*, Cal., 29 Pac. Rep. 325.

218. WIFE'S SEPARATE PROPERTY.—In an action to quiet title it appeared that a husband purchased property with community funds, and that his wife filed a declaration of homestead thereon; that the husband then conveyed the premises to his wife as a gift; that subsequently he wished to sell the land, but the wife refused to join in a deed unless he paid her one-half the proceeds of the sale; that they conveyed the premises by joint deed, and one-half the proceeds were paid to the wife by the husband's consent; that out of this money the wife purchased the property in controversy: *Held*, that the joint conveyance was an abandonment of the homestead under Civil Code, § 1243, and the proceeds paid to the wife, and the premises purchased with them, became her separate property.—*Oaks v. Oaks*, Cal., 29 Pac. Rep. 330.

219. WILLS—Construction.—A devise in these words: "After the decease of my wife, the said Abigal Wade, I give and devise unto Daniel Wade Teller, the son of Samuel and Fanny Teller, all my lands, tenements, and real estate whatsoever and wheresoever, to him and to his heirs, entail the same, forever,"—*held* to create an estate tail under the statute, which, by the act of June 13, 1820, vested an estate for life in Daniel Wade Teller and the fee-simple in children.—*Doty v. Teller*, N. J., 23, Atl. Rep. 944.

220. WILL—Devises — Perpetuties. — A devise to the testator's son, seven years old, for life, remainder to son's children for life, remainder to the son's grandchildren in fee, is void, the gift to the son's grandchildren contravening the rule against perpetuties, and with it falling the other gifts.—*Lockbridge v. Mace*, Mo., 18 S. W. Rep. 1145.

221. WILLS—Legatees.—Testator, after giving six legacies, bequeathed $8,000 to his executors, to be held in trust for the use and benefit of his sister J during her life, and to be divided between her two daughters at her death, and then directed that the residue of his estate should be divided "among the legatees mentioned in this my will, share and share alike:" *Held*, that the residuum should be divided in to seven equal shares, one of which should be given to the executors and held by them on the same trust as the legacy of $8,000 which they were required to hold for the benefit of J and her daughters.—*In re Logen's Estate*, N. Y., 30 N. E. Rep. 485.

222. WILLS—Revocation—Marriage.—The fact that by antenuptial contract a wife is to retain all her property and have only specific and restricted marital rights in her husband's property, does not take a will, previously made by him, outside of Gen. St. ch. 113, § 9, providing that the marriage of any person, after making a will, revokes the will.—*Ransom v. Connelly*, Ky., 18 S. W. Rep. 1029.

223. WITNESS—Competency.—A widow is competent, in a suit against her husband's estate, to testify to the genuineness of his signature, from information of his handwriting which she derived before marriage.—*Stillwell v. Patton*, Mo., 18 S. W. Rep. 1075.

224. WITNESS—Waiver of Privilege.—Rev. St. 1889, § 8925, providing that a physician shall be incompetent to testify concerning information acquired from a patient while attending him in a professional character, merely confers the privilege of suppressing such information upon the patient, which the latter may waive.—*Davenport v. City of Hanibal*, Mo., 18 S. W. Rep. 1122.

225. WITNESS — Transactions with Decedent.—Under Gen. St. § 3643, where one defends an action as surviving partner and also as trustee for the administratrix and the heirs at law of his deceased partner, plaintiff may testify to conversations had with the deceased partner when the surviving partner was also present; and the fact that defendant was sued as trustee of the representatives of his deceased partner as well as for the firm does not bring him within the meaning of section 3641.—*Savard v. Herbert*, Colo., 29 Pac. Rep. 461.

ABSTRACTS OF DECISIONS OF THE MISSOURI COURTS OF APPEAL.

ST. LOUIS COURT OF APPEALS.

APPELLATE PRACTICE — Abstract of Record.— Under Rev. St. 1889, § 2353, providing for the filing of printed abstracts of the record instead of a transcript, if the questions relied on for reversal, are matters of error, rather than of exception, the appellant need only print the record proper, or so much of it as is necessary; if the assignments pertain to matters of exception also, or to matters of exception only, then the abstract must show affirmatively that the bill of exceptions was properly filed; a motion of new trial or in arrest of judgment, the date of filing and the action of the court. Motion to dismiss overruled.—*Hohstadt v. Daggs.*

CONTRACT—Subscription—Interpretation.—Where the plaintiff erected a butter and cheese factory in consideration of $5,800 subscribed by a number of persons, each of whom agreed to take stock in a company to be formed by themselves to the amount of their respective subscriptions, the fact that upon defendant's refusal to pay his subscription $100, that amount of stock was taken by another person and subsequently offered him on the trial is no defense against plaintiff's demand for said sum of $100. Plaintiff's contract was with the subscribers and not with corporation. Reversed.—*Davis v. Johnson.*

CRIMINAL LAW — Libel— Jury Trial.—Where it does not affirmatively appear by the record that the jury were not admonished at the hour of adjournment, and no exception to any action of the court in the premises or assignment of error on that ground will not be sustained. 2. Under Rev. St. 1889, § 3872, providing that in all prosecutions for libel or verbal slander the jury under direction of the court shall determine the law and the fact, the defendant has a right, if he so demands, to have the jury charged that they are the judges of the law and the facts, but a failure to so instruct in cases of misdemeanor (Rev. St. § 4208), is no ground for setting aside a verdict. Affirmed.—*State v. Matheis.*

HIGHWAY—Defect—Liability of Town.—1. Defendant cannot both demur and answer to the whole of plaintiff's petition, and by answering he waives all defects in the petition except that it states no cause of action at all, and that the court has no jurisdiction of the matter, 2. In an action against a town for an injury caused by a defective highway a petition from which, though inartificially drawn, it appears by necessary intendment, that defendant is a town corporation created by the laws of the State, and that the injury occurred owing to a defective bridge, on a public highway within the corporate limits, which highway and bridge it was the defendant's duty to keep in repair. 3. Under Rev. St. 1889, § 2186, an allegation of the existence of a municipal corporation will be taken as admitted unless it is denied by plea under oath. 4. It is not necessary to show express notice to the town authorities of a defect in the highway is a condition precedent to liability; it is sufficient if it appeared that the highway had been out of repair for months prior to the accident and that the town authorities might have known of the defect by the exercise of ordinary care. 5. Where the *locus in quo* was a part of the traveled highway, within the incorporated limits of the defendant, the control of the county authorities over it was withdrawn and placed into the town trustees, and an instruction, that in the absence of an ordinance establishing said street or road and defining its boundaries, the city will not be liable for damages arising from defective bridges there on, though the road may have been used by the public, it was not the duty of defendant to keep such bridge in repair was properly refused. Affirmed.—*Walker v. Town of Point Pleasant.*

MUNICIPAL ORDINANCE—Hogs at Large—Replevin.—Under a city ordinance authorizing the impounding of hogs running at large and the collection as poundage of at least 50 cents for each hog, the failure of the police authorities to exact as much as 50 cents for each animal is not such a failure to comply with the provisions of the ordinance as will authorize a recovery of the hogs by the owner in an action of replevin. Reversed.—*Sherrell v. Murray.*

RAILROAD—Killing Stock—Jurisdiction.—Under Rev. St. 1889, § 6126, actions for injuries to stock must be instituted either in the township where the accident occurred or in an adjoining township, such facts are jurisdictional and must be shown by the evidence. Reversed.—*Whitesides v. St. Louis, etc., R. Co.*

STATUTE—Repeals by Implication—General and Special Provisions.—Rev. St. 1889, pp. 2152, 2153, and 2154, §§ 3, 8, 18 and 19 providing for the office, salary, etc., of the assistant prosecuting attorney of the St. Louis Court of Criminal Correction, and for the lodging of informations in cases of misdemeanor, with such assistant prosecuting attorney, are not repealed by the general provisions of the act April 12, 1877 (Laws 1877, p. 354), that the affidavit should be filed with the clerk of the court having jurisdiction, or deposited with the prosecuting attorney. Affirmed.—*State v. Daly.*

WITNESS — Transactions with Decedents — Donatio Causa Mortis.—Under the statutory disqualification of witnesses as to transactions with deceased persons, a party is incompetent to establish a gift *causa mortis* to himself. Reversed.—*Scott v. Kiley.*

KANSAS CITY COURT OF APPEALS.

APPEAL — Affidavit for, From Justice Judgment. — Affidavit for appeal from judgment of a justice of the peace to the circuit court was made in conformity to Sec. 3043, R. S. 1879, but failed to state, "Whether such appeal is from the merits, or from an order or judgment taxing costs," as required by Sec. 6380 R. S. 1889: *Held*, that on account of this omission, the circuit court did not acquire jurisdiction of the subject-matter of the action.—*Whitehead v. Cole.*

CITY—Liability in Damages.—A petition in action for damages alleged that defendant by its careless, negligent and unskillful manner of executing the work of paving the street in front of plaintiff's lots, raised the roadway thereof, at said point, three feet, thereby damaging plaintiff. It was admitted that no ordinance of the city authorized any change of grade of the street: *Held*, that if persons assuming to act under authority of the city constructed an embankment in the street in front of plaintiff's property, they, and not the city, are liable. The defendant can only be held responsible for the act of its officers, agents or servants in changing the grade of a street when such grade has been authorized by ordinance.—*Gehling v. City of St. Joseph.*

CHATTEL MORTGAGE — Notice. — In January, 1891, X executed to plaintiff a deed of trust conveying to him "one bay mare 15 hands high, in foal by M B's horse." In May the colt was foaled, and while still following the mare, was sold by X to defendant. In an action of replevin for the colt: *Held*, when the owner of a domestic animal gives a mortgage during the period of gestation, the mortgagee will, against the mortgagor, be entitled to the offspring when born. The registration of the deed of trust was constructive notice to third parties of the mortgagee's interest in the property described therein, and the circumstances of this case were sufficient to notify defendant that the colt was the offspring of the mare and subject to the lien of the deed of trust.—*Edmonston v. Wilson.*

EQUITY—Jurisdiction.—In a suit in equity to set aside a judgment of allowance in favor of the defendant against the estate of which plaintiff was administrator, the claim having been allowed by the probate judge in vacation, and after the expiration of the two years following the granting of letters of administration, and the order dated back so as to avoid the bar of the statute: *Held*, a fraud in law, and it is the peculiar province of courts of equity to deal with such cases, even admitting that, in this case, relief of some sort is obtainable at law.—*Daigle v. Pollock.*